

EXHIBIT 291-A

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - -

5 IN RE: NATIONAL : MDL NO. 2804
6 PRESCRIPTION OPIATE :
7 LITIGATION :

8 -----

9 : CASE NO.
10 THIS DOCUMENT : 1:17-MD-2804
11 RELATES TO ALL CASES:

12 : Hon. Dan A.
13 : Polster

14 - - -

15 Friday, August 3, 2018

16 - - -

17 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
18 CONFIDENTIALITY REVIEW

19 - - -

20 Videotaped deposition of
21 CHRISTOPHER ZIMMERMAN, taken pursuant to
22 notice, was held at the law offices of
23 Reed Smith, LLP, Three Logan Square, 1717
24 Arch Street, Suite 3100, Philadelphia,
25 Pennsylvania 19103, beginning at 9:00
26 a.m., on the above date, before Amanda
27 Dee Maslynsky-Miller, a Certified
28 Realtime Reporter.

29 - - -

30

31

32

33 GOLKOW LITIGATION SERVICES
34 877.370.3377 ph| 917.591.5672 fax
35 deps@golkow.com

36

Page 2	Page 4
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24 ALSO PRESENT:

David Lane, Videographer

Zac Hone - Trial Technician

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1

2 E X H I B I T S

3

4 NO. DESCRIPTION PAGE

5 Amerisource Bergen - Zimmerman

6 Exhibit-10 ABDCMDL 00000099-100 283

7 Amerisource Bergen - Zimmerman

8 Exhibit-11 CAH MDL PRIORPROD

9 DEA 07 00880890-92 303 -

10 Amerisource Bergen - Zimmerman

11 Exhibit-12 MNKT1_0000291614-1620 328

12 Amerisource Bergen - Zimmerman

13 Exhibit-13 ABDCMDL 00278212 362

14 Amerisource Bergen - Zimmerman

15 Exhibit-14 ABDCMDL 00000124-147 380

16 Amerisource Bergen - Zimmerman

17 Exhibit-15 No Bates

18 March 2017

19 AmerisourceBergen Code

20 of Ethics and

21 Business Conduct 439

22 Amerisource Bergen - Zimmerman

23 Exhibit-16 No Bates

24 West Virginia Case

Document, Organization

Charts 443

Amerisource Bergen - Zimmerman

Exhibit-17 ABDCMDL 00251392-94 451

Amerisource Bergen - Zimmerman

Exhibit-18 ABDCMDL 00002325-2334 453

Amerisource Bergen - Zimmerman

Exhibit-19 ABDCMDL 00002405-2418 459

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1

2 I N D E X

3

4 Testimony of: CHRISTOPHER ZIMMERMAN

5 By Mr. Pifko 11

6

7 E X H I B I T S

8

9 NO. DESCRIPTION PAGE

10 Amerisource Bergen - Zimmerman

11 Exhibit-1 Notice of Deposition 13

12 Amerisource Bergen - Zimmerman

13 Exhibit-2 *Skipped*

14 Amerisource Bergen - Zimmerman

15 Exhibit-3 Notice of 30(b)(6)

16 Deposition 19

17 Amerisource Bergen - Zimmerman

18 Exhibit-4 2001 Chemical

19 Handler's Notebook 131

20 Amerisource Bergen - Zimmerman

21 Exhibit-5 ABDCMDL 00279854-65 137

22 Amerisource Bergen - Zimmerman

23 Exhibit-6 ABDCMDL 00269683-694 145

24 Amerisource Bergen - Zimmerman

Exhibit-7 ABDCMDL 00000101-122 170

Amerisource Bergen - Zimmerman

Exhibit-8 ABDCMDL 00270533 248

Amerisource Bergen - Zimmerman

Exhibit-9 ABDCMDL 00273425 251

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1

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3

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5 Direction to Witness Not to Answer

6 Page Line Page Line Page Line

7 195 12

8 195 23

9 196 10

10 196 17

11 Request for Production of Documents

12 Page Line Page Line Page Line

13 None

14

15 Stipulations

16 Page Line Page Line Page Line

17 10 1

18

19

20 Question Marked

21 Page Line Page Line Page Line

22 None

23

24

<p style="text-align: right;">Page 10</p> <p>1 - - -</p> <p>2 (It is hereby stipulated and</p> <p>3 agreed by and among counsel that</p> <p>4 sealing, filing and certification</p> <p>5 are waived; and that all</p> <p>6 objections, except as to the form</p> <p>7 of the question, will be reserved</p> <p>8 until the time of trial.)</p> <p>9 - - -</p> <p>10 VIDEO TECHNICIAN: We are</p> <p>11 now on the record. My name is</p> <p>12 David Lane, videographer for</p> <p>13 Golkow Litigation Services.</p> <p>14 Today's date is August 3rd, 2018.</p> <p>15 Our time is 9:23 a.m.</p> <p>16 This deposition is taking</p> <p>17 place in Philadelphia,</p> <p>18 Pennsylvania, in the matter of</p> <p>19 National Prescription Opiate</p> <p>20 Litigation. Our deponent today is</p> <p>21 Chris Zimmerman. Our counsel will</p> <p>22 be noted on the stenographic</p> <p>23 record.</p> <p>24 The court reporter is Amanda</p>	<p style="text-align: right;">Page 12</p> <p>1 your testimony here is under penalty of</p> <p>2 perjury?</p> <p>3 A. Yes.</p> <p>4 Q. And that means that if you</p> <p>5 are untruthful or dishonest in any way</p> <p>6 you could be subject to penalties from</p> <p>7 the court.</p> <p>8 Do you understand that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you intend to provide</p> <p>11 cooperative testimony today?</p> <p>12 A. I do.</p> <p>13 Q. From time to time,</p> <p>14 Amerisource's counsel might assert</p> <p>15 objections. Unless he instructs you not</p> <p>16 to answer, I'm still entitled to an</p> <p>17 answer.</p> <p>18 Do you understand that?</p> <p>19 A. Yes.</p> <p>20 Q. We can take breaks -- I'm</p> <p>21 sure that you went over all this in the</p> <p>22 prep session with your lawyers. We can</p> <p>23 take breaks. The only thing is unless</p> <p>24 your counsel is going to be conferring</p>
<p style="text-align: right;">Page 11</p> <p>1 Miller and will now swear in the</p> <p>2 witness.</p> <p>3 - - -</p> <p>4 CHRISTOPHER ZIMMERMAN, after</p> <p>5 having been duly sworn, was</p> <p>6 examined and testified as follows:</p> <p>7 - - -</p> <p>8 VIDEO TECHNICIAN: Please</p> <p>9 begin.</p> <p>10 - - -</p> <p>11 EXAMINATION</p> <p>12 - - -</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Good morning, Mr. Zimmerman.</p> <p>15 My name is Mark Pifko, I'm counsel for</p> <p>16 plaintiffs in this matter. Just met a</p> <p>17 few moments ago for the first time, off</p> <p>18 the record.</p> <p>19 You understand that you are</p> <p>20 here as the company's designated witness</p> <p>21 for certain topics?</p> <p>22 A. Correct.</p> <p>23 Q. The court reporter just</p> <p>24 swore you in. So you understand that</p>	<p style="text-align: right;">Page 13</p> <p>1 with you about a privilege, we can't take</p> <p>2 a break while a question is pending.</p> <p>3 Do you agree to that?</p> <p>4 A. Yes.</p> <p>5 MR. PIFKO: Let's start by</p> <p>6 handing him the 30(b)(6) notice</p> <p>7 for Number 1.</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. While he's getting that, are</p> <p>10 you under any medications or undergoing</p> <p>11 any treatment of any kind that would</p> <p>12 inhibit your ability to provide truthful</p> <p>13 and accurate testimony today?</p> <p>14 A. No.</p> <p>15 Q. Is there any reason that you</p> <p>16 can state why your deposition should not</p> <p>17 go forward today?</p> <p>18 A. No.</p> <p>19 - - -</p> <p>20 (Whereupon, Amerisource</p> <p>21 Bergen-Zimmerman Exhibit-1, Notice</p> <p>22 of Deposition, was marked for</p> <p>23 identification.)</p> <p>24 - - -</p>

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1 BY MR. PIFKO:
2 Q. I've just handed you what's
3 marked as Exhibit-1, which is a first
4 notice of deposition under Rule 30(b)(6).
5 It's got some topics on
6 here, there are page numbers under there.
7 The topics start on the bottom of the
8 page, Page 6.
9 Do you see that?
10 A. Yes.
11 Q. Have you seen this document
12 before?
13 A. I don't believe so.
14 Q. Have you seen these topics
15 before?
16 A. Let me take a quick look at
17 them.
18 Q. Sorry?
19 A. I'm reading through these
20 real quickly.
21 Q. Just for housekeeping, we
22 didn't go over that, but there are,
23 again, I'm sure your counsel told you
24 some of these things in preparing for the

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1 depo, but there's a couple of ground
2 rules that we have to remember because
3 we're on the record here. Try to
4 annunciate clearly if you're providing an
5 answer, give an audible response and
6 don't say words like uh-huh and uh-uh
7 because when you read it on the
8 transcript, you can't tell if it's a yes
9 or no.
10 Understood?
11 A. Yes.
12 Q. So you're reviewing the
13 document right now?
14 A. Yes.
15 Q. To be clear, my question was
16 if you had seen these topics before,
17 which start on Page 6, and they're
18 lettered A through O.
19 A. Yes.
20 Q. You have seen these topics
21 before?
22 A. I have.
23 Q. Okay. When was the first
24 time you saw these?

Page 16

1 A. A couple of weeks ago,
2 maybe.
3 Q. And are you prepared to
4 provide testimony on behalf of the
5 company with respect to these topics?
6 A. Within a certain time frame,
7 yes.
8 Q. I understand the time frame
9 goes from -- up until the end of 2014; is
10 that correct?
11 A. Correct.
12 MR. NICHOLAS: Just for the
13 record, just one of these topics,
14 Topic O, is one which I believe
15 there's an agreement among counsel
16 that we will respond to in writing
17 as opposed to in testimony here
18 today.
19 MR. PIFKO: Well, we can
20 meet and confer, but I don't
21 intend to take testimony on that
22 topic today in any event.
23 MR. NICHOLAS: Well, just to
24 be clear, though, I think there's

Page 17

1 an agreement that we're responding
2 to this in writing.
3 MR. PIFKO: I'm not aware of
4 such an agreement. I'm not
5 disputing -- or I'm not taking a
6 position.
7 MR. NICHOLAS: Okay.
8 MR. PIFKO: But we can be
9 clear that that's not part of the
10 deposition today, however we end
11 up handling it.
12 MR. NICHOLAS: Okay.
13 BY MR. PIFKO:
14 Q. And so you understand that
15 you're also being deposed here in your
16 individual capacity as well.
17 Do you understand that?
18 A. Yes.
19 Q. For the most part, you can
20 imagine, the company is made up of many
21 individuals, and so it's hard to have
22 someone speak for the company.
23 So what we do in these
24 situations is we have these topics and

<p style="text-align: right;">Page 18</p> <p>1 you, right now sitting in that chair for 2 the purpose of this case, are 3 AmerisourceBergen with respect to these 4 topics. 5 Do you understand that? 6 MR. NICHOLAS: Object to the 7 form. 8 You can answer. 9 THE WITNESS: Yes, I'm going 10 to be speaking on these topics. 11 BY MR. PIFKO: 12 Q. And from time to time, I 13 might be asking, does AmerisourceBergen 14 do this or that? And you'll be 15 answering, you know, so long as it's 16 within the scope of these topics, you'll 17 be answering on behalf of the company. 18 Do you understand that? 19 MR. NICHOLAS: Same 20 objection. 21 But go ahead. 22 THE WITNESS: Yes, I'll be 23 answering questions. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 20</p> <p>1 for identification.) 2 - - - 3 BY MR. PIFKO: 4 Q. It's marked as Exhibit-3, 5 which is the notice that calls us here 6 today. 7 And it also, in addition to 8 calling for your 30(b)(6) testimony, it 9 calls for your individual testimony as 10 well. 11 A. Okay. 12 Q. Are you familiar with The 13 Controlled Substances Act? 14 A. Yes. 15 Q. How long have you been 16 working at AmerisourceBergen? 17 A. Since January 1990. 18 Q. And you are currently senior 19 vice president, chief compliance officer? 20 A. Correct. 21 Q. And you're also senior vice 22 president in charge of the -- what's your 23 exact title for the aspect of the company 24 that deals with compliance with the CSA?</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. And you understand that 2 you'll be answering them on behalf of the 3 company? That's what I'm trying to get 4 at. 5 MR. NICHOLAS: Same 6 objection. 7 You can answer. 8 THE WITNESS: It depends on 9 whether it's as I'm representing 10 the company. You also indicated 11 I'll be answering questions for 12 myself. 13 BY MR. PIFKO: 14 Q. But with respect to these 15 topics, you understand that for the date 16 range we discussed, you'll be answering 17 on behalf of the company? 18 A. Yes. 19 Q. Okay. And then I just 20 handed you what's marked as Exhibit-2. 21 - - - 22 (Whereupon, Amerisource 23 Bergen-Zimmerman Exhibit-3, Notice 24 of 30(b)(6) Deposition, was marked</p>	<p style="text-align: right;">Page 21</p> <p>1 A. So I'm senior vice president 2 of corporate security and regulatory 3 affairs. 4 Q. And you guys called that 5 CSRA within your company? 6 A. That's the abbreviation, 7 yes. 8 Q. So if I use the term "CSRA," 9 you understand what that means? 10 A. Yes. 11 Q. AmerisourceBergen is a 12 registrant under The Controlled 13 Substances Act, correct? 14 A. We are a DEA registrant, 15 correct. 16 Q. Have you ever heard the 17 term, I think -- I'm from California, we 18 drive a lot there, there's a phrase they 19 use that says, driving is a privilege, 20 not a right. 21 Have you ever heard that 22 kind of a phrase before? 23 A. Not really. 24 Q. AmerisourceBergen sells</p>

<p style="text-align: right;">Page 22</p> <p>1 drugs, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Included among those drugs</p> <p>4 are controlled substances, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And it's AmerisourceBergen's</p> <p>7 position as a registrant that allows the</p> <p>8 company to sell controlled substances,</p> <p>9 correct?</p> <p>10 MR. NICHOLAS: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: We have a</p> <p>13 controlled substance registration</p> <p>14 that allows us to distribute.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. And absent that</p> <p>17 registration, it's not legal for</p> <p>18 AmerisourceBergen to sell controlled</p> <p>19 substances, correct?</p> <p>20 A. Correct.</p> <p>21 Q. So do you understand that</p> <p>22 along with the privilege and the right</p> <p>23 to -- the ability to sell controlled</p> <p>24 substances, certain duties are attached</p>	<p style="text-align: right;">Page 24</p> <p>1 THE WITNESS: Can you say</p> <p>2 your question one more time?</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. The ability to sell</p> <p>5 controlled substances also comes with</p> <p>6 certain obligations that you must follow,</p> <p>7 correct?</p> <p>8 MR. NICHOLAS: Same</p> <p>9 objection.</p> <p>10 THE WITNESS: It's the</p> <p>11 obligations of the requirements of</p> <p>12 the Code of Federal Regulations.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. And specifically, that's The</p> <p>15 Controlled Substances Act, correct?</p> <p>16 A. The regulations from the</p> <p>17 act, correct.</p> <p>18 Q. So The Controlled Substances</p> <p>19 Act and the regulations that follow,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know what a duty to</p> <p>23 maintain effective controls is?</p> <p>24 MR. NICHOLAS: Object to the</p>
<p style="text-align: right;">Page 23</p> <p>1 to that as well.</p> <p>2 Do you understand that?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: I'm not sure</p> <p>6 what you're referring to as</p> <p>7 "duties."</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. Okay. You understand there</p> <p>10 are restrictions on what you can do as an</p> <p>11 entity selling controlled substances,</p> <p>12 correct?</p> <p>13 A. There's requirements that we</p> <p>14 follow. I don't know if I'd refer to</p> <p>15 them as restrictions, but there's</p> <p>16 regulatory requirements that we have to</p> <p>17 adhere to.</p> <p>18 Q. Right. So my question is,</p> <p>19 the ability to sell controlled substances</p> <p>20 also comes with certain obligations,</p> <p>21 correct?</p> <p>22 MR. NICHOLAS: Object to the</p> <p>23 form.</p> <p>24 Go ahead.</p>	<p style="text-align: right;">Page 25</p> <p>1 form.</p> <p>2 THE WITNESS: I'm not sure</p> <p>3 what your question is. We -- I'm</p> <p>4 not sure what your question is.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. Have you heard the phrase,</p> <p>7 "duty to maintain effective controls"?</p> <p>8 A. No.</p> <p>9 Q. You've never heard that term</p> <p>10 before?</p> <p>11 A. No.</p> <p>12 Q. Do you have an understanding</p> <p>13 that under The Controlled Substances Act,</p> <p>14 AmerisourceBergen has a duty to maintain</p> <p>15 effective controls to prevent diversion</p> <p>16 of certain substances?</p> <p>17 A. Yes. We have to maintain</p> <p>18 effective controls from diversion. I</p> <p>19 just don't know duty was included in that</p> <p>20 or not.</p> <p>21 Q. I'll represent to you that</p> <p>22 the word "duty" is in there.</p> <p>23 So you do understand that</p> <p>24 you have an obligation to maintain</p>

<p style="text-align: right;">Page 26</p> <p>1 effective controls as part of your 2 serving as a registrant and selling 3 controlled substances? 4 A. Yes, we have an 5 obligation -- there's a regulatory 6 responsibility to have effective controls 7 to prevent diversion. 8 Q. What's your understanding of 9 what that means? 10 MR. NICHOLAS: Object to the 11 form. I object to the question. 12 It's too big. 13 THE WITNESS: I guess -- 14 that's an overarching statement. 15 If you can clarify what 16 instances within the Code of 17 Federal Regulations you're 18 referring to with the effective 19 controls, there's several 20 different areas in there. 21 MR. PIFKO: We're going to 22 have to not have any speaking 23 objections. Saying "too big" is 24 not an objection, and it's</p>	<p style="text-align: right;">Page 28</p> <p>1 MR. PIFKO: Well, if you 2 tell the witness the question is 3 too big and then he responds, I 4 don't know how to answer it, it's 5 too big, then we've got a problem 6 here because you're telling him 7 what to say. 8 Do you understand? 9 MR. NICHOLAS: No, I'm not 10 telling him what to say. I'm 11 making an objection. So why don't 12 you just go ahead? 13 MR. PIFKO: I hope that we 14 can have compliance with the rules 15 here. And understanding that 16 we're going to be doing that, I'm 17 going to proceed. 18 BY MR. PIFKO: 19 Q. You have a duty to maintain 20 effective controls to prevent against 21 diversion, correct? 22 A. Correct. 23 Q. Do you understand what that 24 means?</p>
<p style="text-align: right;">Page 27</p> <p>1 obviously influencing the 2 witness's testimony. 3 So you can state your 4 objection with clarity. You can 5 state form or foundation. But 6 that's all you can do, okay? 7 MR. NICHOLAS: Mark, I 8 appreciate the instruction, but 9 I'm going to have to handle my own 10 objections the way I see fit. 11 MR. PIFKO: If you're going 12 to be coaching the witness 13 throughout the day, we're going to 14 stop the deposition, we're going 15 to seek sanctions and we're going 16 come back here. 17 Do you understand that? 18 MR. NICHOLAS: You can do 19 whatever you think you need to do. 20 I'm not coaching the witness. I'm 21 stating what I think are 22 appropriate objections in the 23 appropriate manner. And you can 24 proceed.</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yes, I understand what that 2 means. 3 Q. What is your understanding 4 of what that means? 5 A. We have to have effective 6 controls to prevent diversion, both on 7 the physical security operational side, 8 as well as ensuring we only distribute to 9 licensed entities, and a duty to report 10 suspicious orders. 11 Q. You mentioned there, "duty 12 to report suspicious orders." 13 If I refer to that as the 14 "reporting requirement," do you have an 15 understanding of that? 16 A. If you are referring to the 17 regulation that we have to design and 18 operate a system to identify suspicious 19 orders and report those suspicious orders 20 to DEA, yes. 21 Q. Okay. So at various points 22 today we might refer to that as the 23 "reporting requirement." 24 Will you understand that?</p>

<p style="text-align: right;">Page 30</p> <p>1 A. Yes. If that's the 2 definition we're going to go with, yes. 3 Q. Okay. There's also a 4 requirement to provide records of all 5 your shipments through the ARCOS system. 6 Are you familiar with that? 7 A. Only certain drugs are 8 within the -- are considered ARCOS 9 products. So not all controlled 10 substances are reported through ARCOS. 11 Q. Fair enough. 12 But to the extent a 13 substance is under the requirement to 14 report to ARCOS, you understand that 15 there's an obligation to do so, correct? 16 A. Yes. 17 Q. Okay. You understand that 18 the reporting to ARCOS is different than 19 the reporting of a suspicious order, 20 correct? 21 A. Yes. 22 Q. So complying with the ARCOS 23 requirement does not equate to compliance 24 with the suspicious order reporting</p>	<p style="text-align: right;">Page 32</p> <p>1 well? 2 A. I don't -- I don't think 3 there's a requirement not to ship. We do 4 not ship suspicious orders. 5 Q. So it's your position that 6 there's no requirement under the law to 7 not ship a suspicious order? 8 A. Not that I know of. 9 Q. You testified in the West 10 Virginia Attorney General litigation in 11 2016, correct? 12 A. Yes. 13 Q. Let's back up for a second. 14 When we talk about this idea 15 to prevent diversion, do you have an 16 understanding of why there is such a 17 requirement? 18 MR. NICHOLAS: Object to the 19 form. 20 THE WITNESS: There's 21 certain -- as a distributor, the 22 DEA outlines certain requirements 23 that distributors -- I'll speak as 24 for a distributor -- has to adhere</p>
<p style="text-align: right;">Page 31</p> <p>1 requirement. 2 Do you understand that? 3 A. Yes. 4 Q. Have you heard of the 5 shipping requirement? 6 A. No. 7 Q. Are you familiar with the 8 Masters Pharmaceutical case? 9 A. I've seen it, yes. 10 Q. Are you aware that that case 11 discusses something called the shipping 12 requirement? 13 A. I've seen that reference to 14 shipping requirement. 15 Q. Do you know what that is? 16 A. No. 17 Q. You have no understanding of 18 what the shipping requirement is? 19 A. I've never seen it in the 20 Code of Federal Regulations. 21 Q. Do you understand that in 22 addition to reporting a suspicious order 23 to the DEA, AmerisourceBergen is required 24 to -- not to ship a suspicious order as</p>	<p style="text-align: right;">Page 33</p> <p>1 to in order to maintain effective 2 controls to prevent diversion. 3 And those are the -- those 4 are the regulations that our 5 company follows, and those are the 6 ones we have implemented in order 7 to maintain our registration. 8 BY MR. PIFKO: 9 Q. Right. So what I'm trying 10 to understand is, do you have an 11 understanding about what the purpose is 12 of those rules? 13 MR. NICHOLAS: Object to the 14 form. 15 THE WITNESS: The purpose is 16 to maintain effective controls 17 within the distribution center. 18 BY MR. PIFKO: 19 Q. And why do we want to do 20 that? 21 MR. NICHOLAS: Object to the 22 form. 23 THE WITNESS: Because those 24 are the requirements of the</p>

<p style="text-align: right;">Page 34</p> <p>1 regulations. 2 BY MR. PIFKO: 3 Q. Do you have an understanding 4 about why those are the requirements of 5 the regulations? 6 MR. NICHOLAS: Object to the 7 form. 8 THE WITNESS: Those are the 9 regulations that we have to follow 10 in order to keep our registration. 11 To be a distributor, you have to 12 meet those requirements in the 13 regulations. 14 BY MR. PIFKO: 15 Q. Are you familiar with the 16 scheduling system of controlled 17 substances? 18 A. I understand that there's 19 Schedules I through IV, yes. 20 Q. Do you know what a Schedule 21 I substance is? 22 A. I believe -- I don't know 23 the official, but it's no -- I believe it 24 references there's no medical purpose.</p>	<p style="text-align: right;">Page 36</p> <p>1 Schedule II substance has a high 2 potential for abuse? 3 MR. NICHOLAS: Object to the 4 form. 5 THE WITNESS: I don't know 6 that. But it's a Schedule II. 7 BY MR. PIFKO: 8 Q. What do you mean by, "I 9 don't know that but it's a Schedule II"? 10 A. You asked if I knew whether 11 the government stated -- I don't know if 12 the government stated that. But I know, 13 by it being a Schedule II, it has a high 14 potential of abuse. 15 Q. So you do know that a 16 Schedule II substance has a high 17 potential for abuse, correct? 18 A. That's why it's a Schedule 19 II. 20 Q. And you know that this case 21 primarily concerns Schedule II 22 substances? 23 A. I don't know -- I don't know 24 that.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. How about Schedule II, do 2 you know what a Schedule II substance is? 3 A. It's a Schedule II 4 controlled substance, yes. 5 Q. But what's -- what are 6 attributes of a Schedule II substance -- 7 MR. NICHOLAS: Object. 8 BY MR. PIFKO: 9 Q. -- based on your 10 understanding? 11 MR. NICHOLAS: Object to the 12 form. 13 Go ahead. 14 THE WITNESS: The Schedule 15 II, III, IV, V are all scheduled 16 as to their potential for abuse. 17 BY MR. PIFKO: 18 Q. Do you understand that a 19 Schedule II substance has a high 20 potential for abuse? 21 A. It's higher than III and IV 22 and V. 23 Q. Do you understand that the 24 United States government has said that a</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. We'll get into that. 2 A. Okay. 3 Q. Do you know what a Schedule 4 III substance is? 5 A. It's a controlled substance 6 that has a -- that has a potential of 7 abuse but not as high as a Schedule II. 8 Q. So a Schedule I -- Schedule 9 II substance has a high potential for 10 abuse and a Schedule III substance has a 11 potential for abuse but may be less high 12 than Schedule II, correct? 13 A. Correct. 14 Q. You understand that this 15 case concerns opioid products, correct? 16 A. Correct. 17 Q. Do you know what an opioid 18 product is? 19 A. A product that contains 20 opioid. 21 Q. Do you know what the word 22 "opioid" means? 23 A. I believe that's the active 24 ingredient in the drug.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. Do you know what the active 2 ingredient in morphine is? 3 A. I don't know. 4 Q. The word "opiate," it 5 derives from opium. 6 Do you understand that? 7 A. Yes. 8 Q. Opium comes from a poppy 9 flower. 10 Do you understand that? 11 A. I understand that, yes. 12 Q. So a product that is an 13 opioid is derived from the opium. 14 Do you have an understanding 15 of that? 16 MR. NICHOLAS: Objection. 17 THE WITNESS: I don't know 18 the medical makeup and how -- of 19 how an opioid is manufactured. I 20 don't know that. 21 BY MR. PIFKO: 22 Q. But you understand that the 23 active ingredient is derived from some 24 opiate-like substance?</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes. 2 Q. When we use the word 3 "diversion," do you have an understanding 4 about what that means? 5 A. It depends on the context. 6 Q. In the context of The 7 Controlled Substances Act. 8 MR. NICHOLAS: Object to the 9 form. 10 THE WITNESS: So diversion 11 is that a drug that's -- well, 12 again, it depends. Even with 13 controlled substances, it could 14 be -- it could have several 15 different meanings. So if it's 16 diverted from theft, it could be a 17 diversion because of a bad 18 prescription. 19 It's when a drug -- I've 20 seen it referenced as a drug that 21 leaves the normal distribution 22 channels. 23 BY MR. PIFKO: 24 Q. Okay. What's the normal</p>
<p style="text-align: right;">Page 39</p> <p>1 MR. NICHOLAS: Objection. 2 Asked and answered. 3 THE WITNESS: I know it's an 4 opioid. I don't know the 5 derivatives. 6 BY MR. PIFKO: 7 Q. Can you name any substances 8 that you understand to be classified as 9 an opioid? 10 A. Oxycodone, hydrocodone are 11 the two major ones. 12 Q. Any others? 13 A. I know those for sure. I 14 don't want to speculate on some of the 15 others. 16 Q. Do you have an understanding 17 that at certain relevant time periods in 18 this case certain hydrocodone combination 19 products were classified as Schedule III 20 substances? 21 A. Yes. 22 Q. And they were later 23 reclassified as a Schedule II substance. 24 Do you understand that?</p>	<p style="text-align: right;">Page 41</p> <p>1 distribution channel? 2 A. That -- the closed system of 3 manufacture to DEA registrant distributor 4 to DEA registrant dispenser. 5 Q. Do you have an understanding 6 about what the closed system is? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: The closed 10 system as it pertains to? 11 BY MR. PIFKO: 12 Q. Well, you just used it in 13 your answer, so I want to know what you 14 were referring to. 15 A. The closed system of 16 controlled substances? I just want to 17 make sure I understand your question. 18 Q. You talked about a drug 19 leaving the normal channels within the 20 closed system. So I'm trying to 21 understand what you meant by "closed 22 system." 23 A. I said distribution channel, 24 I didn't say closed system.</p>

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1 Q. I think you said within the
2 closed system, or something to that
3 effect.
4 A. I thought I said
5 distribution channel.
6 Q. We don't need to fight about
7 what you said or didn't say.
8 What I just want to know,
9 your -- do you have an understanding
10 about what the closed system is under The
11 Controlled Substances Act?
12 MR. NICHOLAS: Object to the
13 form.
14 THE WITNESS: The closed
15 system, as I've heard it referred
16 to, is that the DEA sets the
17 quotas of how much product can be
18 produced, then manufactured; those
19 products are transferred to the
20 distributor through ARCOS, which
21 is maintained -- transferred to
22 the distributor.
23 And then the distributor
24 transfers to the pharmacy or the

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1 dispenser with an ARCOS
2 transaction, which closes the
3 distribution, as far as DEA
4 tracking goes.
5 BY MR. PIFKO:
6 Q. So there are legitimate
7 channels of distribution within that
8 system, correct?
9 MR. NICHOLAS: Object to the
10 form.
11 THE WITNESS: That is the --
12 that is the legitimate
13 distribution channel.
14 BY MR. PIFKO:
15 Q. Okay. And then there could
16 be -- a channel of distribution outside
17 of that system, that would be
18 illegitimate, correct?
19 MR. NICHOLAS: Object to the
20 form.
21 THE WITNESS: I can't say
22 what type of other distribution.
23 I can only comment on our
24 distribution system.

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1 BY MR. PIFKO:
2 Q. Well, you said that that's
3 the legitimate one, the one you just
4 described, correct?
5 A. That's the -- you asked me
6 what the closed distribution was, and
7 that's what the closed distribution is.
8 Q. And you understand that your
9 duty to prevent diversion is to prevent
10 applicable controlled substances from
11 exiting that system?
12 MR. NICHOLAS: Object to the
13 form.
14 THE WITNESS: Our
15 responsibility is to ensure that
16 we distribute FDA-approved drugs
17 from the -- that we maintain in
18 our distribution centers to
19 licensed entities.
20 BY MR. PIFKO:
21 Q. And what do you mean by
22 "licensed entities"?
23 A. Pharmacies, hospitals, DEA
24 registrants and State Board of Pharmacy

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1 registrants.
2 Q. And you understand that
3 those registrants also have duties to
4 maintain effective controls as well?
5 MR. NICHOLAS: Object to the
6 form.
7 THE WITNESS: They have
8 their own regulations that they
9 must follow, correct.
10 BY MR. PIFKO:
11 Q. So the idea of preventing
12 diversion is to prevent substances from
13 getting into illegal hands, correct?
14 MR. NICHOLAS: Object to the
15 form.
16 THE WITNESS: Each
17 registrant has its
18 responsibilities to maintain
19 effective controls to prevent
20 diversion. We maintain those
21 within our registrant's capacity,
22 correct.
23 BY MR. PIFKO:
24 Q. Can you give me an example

<p style="text-align: right;">Page 46</p> <p>1 of diversion?</p> <p>2 MR. NICHOLAS: Objection.</p> <p>3 Object to the form.</p> <p>4 THE WITNESS: As I stated,</p> <p>5 diversion can be many different</p> <p>6 things. So I need some more</p> <p>7 clarification of what type of</p> <p>8 diversion you're talking about.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. Let's make it specific to</p> <p>11 the issues in this case.</p> <p>12 So, again, you understand</p> <p>13 this case concerns opioid products,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. And those are, for the most</p> <p>17 part, Schedule II substances under The</p> <p>18 Controlled Substances Act, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Can you give me an</p> <p>21 example of what it means to have an</p> <p>22 opioid product diverted, as we were</p> <p>23 talking about this under The Controlled</p> <p>24 Substances Act?</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Well, it's your -- among the</p> <p>2 responsibilities you have with the</p> <p>3 company, one of them is to manage the</p> <p>4 company's efforts to maintain effective</p> <p>5 controls against diversion, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And so I understand that</p> <p>8 maybe there might be several examples,</p> <p>9 but I'd like to get your understanding of</p> <p>10 the types of situations we're talking</p> <p>11 about here.</p> <p>12 So you talked about sale to</p> <p>13 an unlicensed --</p> <p>14 MR. NICHOLAS: I'm going</p> <p>15 to -- I want to interpose an</p> <p>16 objection. This is not coaching,</p> <p>17 but the question is tremendously</p> <p>18 broad.</p> <p>19 MR. PIFKO: You can say</p> <p>20 broad as an objection.</p> <p>21 "Tremendously" is not necessary.</p> <p>22 That's -- we're good here.</p> <p>23 MR. NICHOLAS: Okay. Broad.</p> <p>24 So I would ask you to narrow it.</p>
<p style="text-align: right;">Page 47</p> <p>1 MR. NICHOLAS: Object to the</p> <p>2 form.</p> <p>3 THE WITNESS: There's a lot</p> <p>4 of different ways drugs can be</p> <p>5 diverted from our distribution</p> <p>6 center. Diversion could be if</p> <p>7 we -- if we, not ABC -- but if a</p> <p>8 company diverted product to an</p> <p>9 unlicensed location, a</p> <p>10 nonregistered location, that could</p> <p>11 be diversion.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. Any other --</p> <p>14 MR. NICHOLAS: Object to the</p> <p>15 form.</p> <p>16 THE WITNESS: I'm not going</p> <p>17 to sit here and try to list all</p> <p>18 the areas that could be -- where</p> <p>19 diversion could occur, because we</p> <p>20 could be here for a long time.</p> <p>21 And that's why you have</p> <p>22 effective controls to prevent</p> <p>23 diversion.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 49</p> <p>1 MR. PIFKO: Your objection</p> <p>2 is noted.</p> <p>3 MR. NICHOLAS: The witness</p> <p>4 has asked you to narrow it.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. So you're the person from</p> <p>7 AmerisourceBergen who is responsible for</p> <p>8 ensuring compliance with The Controlled</p> <p>9 Substances Act requirement to maintain</p> <p>10 effective controls against diversion,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And so I'd like an example,</p> <p>14 a bunch of examples, of what diversion</p> <p>15 is, from you.</p> <p>16 MR. NICHOLAS: Same</p> <p>17 objection.</p> <p>18 Go ahead.</p> <p>19 THE WITNESS: So what we do</p> <p>20 to prevent diversion is --</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. I'm not asking what you do</p> <p>23 to prevent diversion --</p> <p>24 MR. NICHOLAS: Hold on.</p>

<p style="text-align: right;">Page 50</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. -- just an example of what</p> <p>3 diversion is.</p> <p>4 MR. NICHOLAS: Hold on.</p> <p>5 Let's stay on the record.</p> <p>6 You can't interrupt him when</p> <p>7 he's answering the question.</p> <p>8 MR. PIFKO: He needs to</p> <p>9 answer the question asked. I</p> <p>10 don't -- we're not going to have</p> <p>11 speeches where he talks about</p> <p>12 things that aren't asked.</p> <p>13 MR. NICHOLAS: You didn't</p> <p>14 hear his answer. He said five</p> <p>15 words, and you interrupted him.</p> <p>16 MR. PIFKO: He said what we</p> <p>17 do to prevent diversion. And</p> <p>18 that's not what I asked. I asked</p> <p>19 what diversion is.</p> <p>20 MR. NICHOLAS: Those were</p> <p>21 his first five words. You're</p> <p>22 going to have to let him answer</p> <p>23 the question.</p> <p>24 You're going to have to</p>	<p style="text-align: right;">Page 52</p> <p>1 and I'll rephrase it. And we'll work</p> <p>2 through it. But I would appreciate your</p> <p>3 testimony in responding to exactly the</p> <p>4 questions that I ask.</p> <p>5 Do we have an agreement</p> <p>6 about that?</p> <p>7 MR. NICHOLAS: Objection.</p> <p>8 Because he's been doing that.</p> <p>9 THE WITNESS: I'm trying to</p> <p>10 answer your question, but you</p> <p>11 won't let me give my -- I did</p> <p>12 state that there's a lot of</p> <p>13 different areas where diversion</p> <p>14 could occur.</p> <p>15 And you asked for a list of</p> <p>16 them. I'm going to tell you how</p> <p>17 we prevent diversion and then from</p> <p>18 that area, anywhere in there, a</p> <p>19 diversion can occur.</p> <p>20 And that's how I was going</p> <p>21 to answer the question.</p> <p>22 So we first have physical</p> <p>23 security controls to prevent</p> <p>24 diversion; we have cages and</p>
<p style="text-align: right;">Page 51</p> <p>1 let -- you ask a question, the</p> <p>2 witness is then entitled to say</p> <p>3 what he wants in answering the</p> <p>4 question.</p> <p>5 MR. PIFKO: He's not</p> <p>6 entitled to say anything he wants,</p> <p>7 he's entitled to answer the</p> <p>8 question.</p> <p>9 MR. NICHOLAS: No, he's</p> <p>10 entitled to say what he wants --</p> <p>11 what he believes is answering the</p> <p>12 question, and then you can ask</p> <p>13 another question. So don't</p> <p>14 interrupt him again, please.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. I'm sure that in preparing</p> <p>17 for this deposition, your counsel told</p> <p>18 you to listen to the question. So I want</p> <p>19 you to be very careful and listen to the</p> <p>20 questions that I ask, okay?</p> <p>21 Do you understand that?</p> <p>22 A. Yes.</p> <p>23 Q. And so, again, if you don't</p> <p>24 understand a question, you let me know,</p>	<p style="text-align: right;">Page 53</p> <p>1 vaults that are required by the</p> <p>2 CFR.</p> <p>3 We have -- we do background</p> <p>4 checks on our employees. We do</p> <p>5 due diligence of our customers to</p> <p>6 ensure that they're licensed and</p> <p>7 in good standing with the DEA and</p> <p>8 Boards of Pharmacy.</p> <p>9 So there's a whole host of</p> <p>10 things that we do within the -- as</p> <p>11 a licensed distributor, to prevent</p> <p>12 diversion.</p> <p>13 If we weren't doing those</p> <p>14 things, diversion could occur at</p> <p>15 any one of those steps. So if we</p> <p>16 didn't --</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. That's not the question I</p> <p>19 asked. I asked you to give examples of</p> <p>20 diversion. You're giving me examples of</p> <p>21 prevention of diversion and that's not</p> <p>22 the question that was asked.</p> <p>23 MR. NICHOLAS: I object.</p> <p>24 BY MR. PIFKO:</p>

<p style="text-align: right;">Page 54</p> <p>1 Q. We'll go through it -- we'll 2 go through it again. 3 So let's talk about 4 diversion of a Schedule II controlled 5 substance at a pharmacy. 6 Can you explain what 7 potential areas of diversion are in that 8 context? 9 MR. NICHOLAS: Object to the 10 form. 11 THE WITNESS: I'm not 12 responsible for the diversion that 13 occurs within a pharmacy. If a 14 pharmacy has -- is filling 15 prescriptions that are invalid or 16 if a pharmacy is selling 17 prescriptions -- not 18 prescriptions -- or diverting 19 drugs out the back door, you know, 20 I have no eyes to that. 21 BY MR. PIFKO: 22 Q. Okay. But those are some 23 examples of a pharmacy filling 24 prescriptions or selling controlled</p>	<p style="text-align: right;">Page 56</p> <p>1 the pharmacy. 2 BY MR. PIFKO: 3 Q. Do you understand why we 4 want to prevent these diversion 5 activities to occur? 6 MR. NICHOLAS: Object to the 7 form. Asked and answered. 8 THE WITNESS: When you say 9 "we," I'm not understanding your 10 question of who is the "we." 11 BY MR. PIFKO: 12 Q. We're all Americans here, 13 and the law is a law of the American 14 jurisprudence, and it's requiring that. 15 And so when I say "we," I mean the people 16 of the United States. 17 So the question is, do you 18 understand why, when enacting that law, 19 we want to prevent diversion in the way 20 we just described? 21 MR. NICHOLAS: Well, I'll 22 object to the form of that 23 question. 24 THE WITNESS: That's why</p>
<p style="text-align: right;">Page 55</p> <p>1 substances without a valid prescription, 2 that would be a diversion, correct? 3 A. As it stands -- is my 4 understanding, yes. 5 Q. And if -- you said if 6 there's -- the pills are flowing out the 7 back door without being sold to anyone or 8 theft, or something like that, that would 9 be diversion, correct? 10 A. That could be a type of 11 diversion, yes. 12 Q. What about a prescription 13 that's written by a doctor who doesn't 14 have a valid DEA registration, is that -- 15 if someone sells pills to somebody who 16 has that kind of a prescription, is that 17 diversion? 18 MR. NICHOLAS: Object to the 19 form. 20 THE WITNESS: That would be 21 the responsibility of the 22 pharmacy. I mean, the distributor 23 has no line of sight on the doctor 24 who is writing prescriptions to</p>	<p style="text-align: right;">Page 57</p> <p>1 there's DEA regulations, because 2 of the -- to prevent diversion. 3 BY MR. PIFKO: 4 Q. And is diversion a good 5 thing? 6 MR. NICHOLAS: Object to the 7 form. 8 THE WITNESS: Is diversion a 9 good thing? I don't think so. 10 BY MR. PIFKO: 11 Q. Why not? 12 MR. NICHOLAS: Objection. 13 Object to the form. 14 THE WITNESS: In the context 15 of -- in the context of diversion 16 from a licensed entity, that's -- 17 that's not good. 18 BY MR. PIFKO: 19 Q. And why not? 20 A. Because it's in violation of 21 the regulation. 22 Q. Is there -- other than it 23 violating the regulation, is there any 24 impact of diversion?</p>

<p style="text-align: right;">Page 58</p> <p>1 MR. NICHOLAS: Object to the 2 form. 3 THE WITNESS: I'm -- I'm not 4 understanding your question. 5 If there's diversion of the 6 product, that's -- as I indicated, 7 that's against the regulations. 8 That's a bad thing. 9 BY MR. PIFKO: 10 Q. What I'm trying to 11 understand is, these are situations that 12 the regulations are designed to prevent 13 from occurring, correct? 14 A. Yes. 15 Q. And I'm trying to understand 16 why is it that we would have regulations 17 to prevent these things from occurring. 18 Do you have an understanding 19 of that? 20 MR. NICHOLAS: I'll object 21 to the form. 22 THE WITNESS: It's the same 23 reason why we have regulations for 24 the approval of the drugs, of how</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. I'm going to give you an 2 opportunity to speak. 3 But what I'm hearing -- and 4 so you correct me if I'm wrong, but what 5 I'm hearing from you is that 6 AmerisourceBergen Corporation has zero 7 understanding of why we should stop 8 diversion under The Controlled Substances 9 Act? 10 MR. NICHOLAS: I'll object 11 to the form of the question. 12 That's a false statement. 13 THE WITNESS: That's not 14 what I'm saying. 15 BY MR. PIFKO: 16 Q. The jury is watching the 17 video and that's what they're seeing, 18 because that's what I'm seeing. 19 MR. NICHOLAS: You don't 20 need to grandstand with references 21 to the jury -- 22 MR. PIFKO: And I -- 23 MR. NICHOLAS: -- just ask 24 the questions.</p>
<p style="text-align: right;">Page 59</p> <p>1 you store and manage the drugs and 2 how -- you know, that's the basis 3 of our system. 4 BY MR. PIFKO: 5 Q. And what is the reason for 6 that? 7 MR. NICHOLAS: This has been 8 asked and answered about seven or 9 eight times now. I will object. 10 THE WITNESS: The reason is 11 to have effective controls to 12 prevent diversion. I think I've 13 said that several times. 14 BY MR. PIFKO: 15 Q. And why do we want to 16 prevent diversion? 17 MR. NICHOLAS: Objection. 18 Asked and answered. You're asking 19 the same question again and again. 20 And he's answering it again and 21 again. 22 THE WITNESS: What's the 23 question one more time? I mean -- 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 61</p> <p>1 BY MR. PIFKO: 2 Q. I genuinely would like a 3 response. And I'm sure that you can 4 provide an answer. I'm trying to get 5 that from you. 6 MR. NICHOLAS: The witness 7 has been providing an answer. 8 You can go ahead. 9 THE WITNESS: And what was 10 that, I mean, your last statement, 11 that AmerisourceBergen has -- 12 BY MR. PIFKO: 13 Q. So I've asked you, why do we 14 want to prevent diversion? And what I'm 15 hearing back is, that's what the rule is. 16 And I'm trying to 17 understand, is it AmerisourceBergen's 18 position in this litigation that other 19 than following the rules, there's no 20 reason, it has no understanding of why 21 we're trying to prevent diversion? 22 MR. NICHOLAS: Object to the 23 form of the question. 24 THE WITNESS: I think I've</p>

<p style="text-align: right;">Page 62</p> <p>1 answered the question, and I --</p> <p>2 your understanding or your</p> <p>3 statement that we don't have any</p> <p>4 other intent other than following</p> <p>5 the regulations is incorrect.</p> <p>6 I mean, there's rules and</p> <p>7 regulations in place for the</p> <p>8 proper manufacture, distribution,</p> <p>9 dispensing of, in this case,</p> <p>10 controlled substances.</p> <p>11 And that's because these</p> <p>12 items, the opioids, you said, have</p> <p>13 a potential for abuse. So you</p> <p>14 have to have additional</p> <p>15 requirements to make sure you're</p> <p>16 handling them properly.</p> <p>17 And each registrant in the</p> <p>18 channel has a responsibility. ABC</p> <p>19 has our responsibilities. We take</p> <p>20 them very seriously. We make sure</p> <p>21 we only buy them from</p> <p>22 manufacturers. We store them</p> <p>23 properly. We make sure they're</p> <p>24 checked, double-checked,</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. We'll establish --</p> <p>2 MR. NICHOLAS: Hold on.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. -- we're going to establish</p> <p>5 that later.</p> <p>6 MR. NICHOLAS: I'm going to</p> <p>7 object to that and move to strike</p> <p>8 the mischaracterization and the</p> <p>9 inappropriate characterization</p> <p>10 slander in the testimony.</p> <p>11 Proceed, but please don't --</p> <p>12 MR. PIFKO: I --</p> <p>13 MR. NICHOLAS: Please don't</p> <p>14 tell him he's making false</p> <p>15 statements.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. I think we were getting</p> <p>18 closer there when you said we want to</p> <p>19 prevent diversion because these drugs</p> <p>20 have a potential for high abuse.</p> <p>21 You said that, correct?</p> <p>22 MR. NICHOLAS: Object to the</p> <p>23 form.</p> <p>24 Go ahead.</p>
<p style="text-align: right;">Page 63</p> <p>1 triple-checked. We make sure</p> <p>2 they're stored appropriately in</p> <p>3 cages and vaults. We vet our</p> <p>4 employees. We train our</p> <p>5 employees. We vet our customers.</p> <p>6 And we take it very</p> <p>7 seriously. So we only distribute</p> <p>8 products to those pharmacies and</p> <p>9 dispensers and hospitals that are</p> <p>10 in good standing with DEA and the</p> <p>11 Board of Pharmacy. So we adhere</p> <p>12 to our requirements.</p> <p>13 Those drugs aren't diverted</p> <p>14 while they're under our control.</p> <p>15 I don't know how much more clearly</p> <p>16 I can state that.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. We'll get into that later.</p> <p>19 There's a lot of misstatements in your</p> <p>20 thing, but we don't have to argue about</p> <p>21 that.</p> <p>22 MR. NICHOLAS: I'll object</p> <p>23 to that and --</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 65</p> <p>1 THE WITNESS: Again, I</p> <p>2 don't -- we, as distributors,</p> <p>3 don't -- don't identify what drugs</p> <p>4 are -- have high abuse. That's</p> <p>5 done by DEA and FDA.</p> <p>6 We have a -- we are a</p> <p>7 distributor, we have our</p> <p>8 requirements that we must follow</p> <p>9 to protect those drugs while</p> <p>10 they're under our control. And we</p> <p>11 take that very seriously and we do</p> <p>12 that.</p> <p>13 I'm not understanding what</p> <p>14 more you want from me, other than</p> <p>15 our regulatory and our obligations</p> <p>16 to protect and ensure those drugs</p> <p>17 are not diverted while under our</p> <p>18 control.</p> <p>19 BY MR. PIFKO:</p> <p>20 Q. And you want to ensure that</p> <p>21 they're not diverted while they're under</p> <p>22 your control because they have a high</p> <p>23 potential -- whether you said it or</p> <p>24 not -- because they have a high potential</p>

<p style="text-align: right;">Page 66</p> <p>1 for abuse under the system; is that 2 correct?</p> <p>3 MR. NICHOLAS: Object to the 4 form of the question.</p> <p>5 THE WITNESS: Because they 6 are a controlled substance and 7 because they're a prescription 8 product.</p> <p>9 We treat our prescription 10 drugs with the same manner as the 11 opioids. I mean, we have 12 additional controls, depending 13 upon whether it's Schedule II or 14 III through IV, whether they're in 15 a vault or a cage.</p> <p>16 But we protect all the 17 product, we prevent diversion from 18 all products.</p> <p>19 BY MR. PIFKO: 20 Q. Do you have an understanding 21 that we want to prevent the unlawful 22 distribution of opioids to protect the 23 public health?</p> <p>24 MR. NICHOLAS: Objection.</p>	<p style="text-align: right;">Page 68</p> <p>1 have an understanding that you're 2 required to prevent diversion of opioid 3 products to protect the public health?</p> <p>4 MR. NICHOLAS: Objection.</p> <p>5 The witness is not required to 6 answer yes or no. And he has 7 answered the question.</p> <p>8 THE WITNESS: And I -- I -- 9 I think I stated what our 10 obligations are under the 11 requirements.</p> <p>12 BY MR. PIFKO: 13 Q. I'm not asking what your 14 obligations are under the requirements. 15 I'm asking you if the 16 company understands that the reason for 17 preventing diversion of opioid products 18 is, in part, to protect public health?</p> <p>19 MR. NICHOLAS: I'll object 20 to the form of the question. And 21 add as a basis at this point that 22 I don't believe any of this is 23 covered in any of the topics of 24 your 30(b)(6) notice.</p>
<p style="text-align: right;">Page 67</p> <p>1 Object to the form.</p> <p>2 THE WITNESS: Can you state 3 that question again, please?</p> <p>4 BY MR. PIFKO: 5 Q. Do you have an understanding 6 that you're required to prevent diversion 7 of opioid products to protect the public 8 health?</p> <p>9 MR. NICHOLAS: Object to the 10 form.</p> <p>11 THE WITNESS: I understand 12 that we have an obligation to have 13 effective controls to prevent 14 diversion because of our 15 regulatory responsibilities and 16 duties. And that's what we 17 implement.</p> <p>18 I'm not here to comment 19 on --</p> <p>20 BY MR. PIFKO: 21 Q. That's not -- you can answer 22 yes or no. That wasn't an answer to my 23 question.</p> <p>24 So my question is, do you</p>	<p style="text-align: right;">Page 69</p> <p>1 So we're way far afield 2 here.</p> <p>3 THE WITNESS: And I'm not -- 4 I don't want to comment on what 5 our duty is to public health.</p> <p>6 BY MR. PIFKO: 7 Q. So you have no comment about 8 whether you have a duty to protect public 9 health? Is that your answer?</p> <p>10 A. We have a duty to have 11 effective controls to prevent diversion 12 as the products are within our 13 distribution channel.</p> <p>14 And we have a duty to ensure 15 that we only sell products to licensed 16 pharmacies and dispensers and hospitals. 17 And that is our duty.</p> <p>18 Q. In carrying out your duty to 19 prevent diversion, does AmerisourceBergen 20 consider the impact on the public?</p> <p>21 MR. NICHOLAS: Object to the 22 form of the question. This is not 23 in your notice. You're way far 24 afield. You've asked this</p>

<p style="text-align: right;">Page 70</p> <p>1 question many, many times. And 2 it's been answered. 3 THE WITNESS: I think I said 4 what I feel our duty is, to ensure 5 we have proper controls to prevent 6 diversion while the drugs are 7 within our control. 8 BY MR. PIFKO: 9 Q. You're not answering the 10 question. I didn't ask you what your 11 duty was. 12 I asked you if, in carrying 13 out your duty, does AmerisourceBergen 14 consider the impact on the public? 15 MR. NICHOLAS: Object to the 16 form of the question. He has been 17 answering the question a number of 18 times. I suggest that we move on. 19 THE WITNESS: I think I've 20 answered the question. 21 BY MR. PIFKO: 22 Q. You haven't. It's very 23 clear, you have not answered the 24 question.</p>	<p style="text-align: right;">Page 72</p> <p>1 answer to a question that's not being 2 asked. Let's start over here. 3 I'm trying to ask, does 4 AmerisourceBergen consider public health 5 when it's carrying out its duty to 6 prevent diversion? 7 MR. NICHOLAS: Object to the 8 form of the question. Asked and 9 answered. Outside the scope of 10 the notice. 11 THE WITNESS: We consider 12 our responsibilities that we're 13 obligated to follow to ensure that 14 products are handled 15 appropriately, safely and securely 16 within the supply channel under 17 our control. 18 BY MR. PIFKO: 19 Q. Is public health one of 20 those considerations? 21 MR. NICHOLAS: Object to the 22 form of the question. Come on. 23 THE WITNESS: It's not 24 something that -- our</p>
<p style="text-align: right;">Page 71</p> <p>1 MR. NICHOLAS: Object. 2 That's just a statement. There's 3 nothing for you to say right now. 4 MR. PIFKO: Yeah, there is. 5 I've -- 6 MR. NICHOLAS: There's no 7 question pending. 8 MR. PIFKO: -- I've asked 9 the question and we haven't had an 10 answer. I've been trying to ask 11 it for the last ten minutes. 12 THE WITNESS: And I've 13 answered -- 14 MR. PIFKO: And I still 15 haven't gotten an answer -- 16 THE WITNESS: -- the 17 question of what our 18 responsibilities are. 19 BY MR. PIFKO: 20 Q. I'm not asking you -- but 21 that's not what the question is. 22 A. That's my answer. 23 Q. You're not answering the 24 question. You can't just make up an</p>	<p style="text-align: right;">Page 73</p> <p>1 consideration is how we -- who we 2 purchase the products from, how we 3 store the products and who we 4 distribute those products to. 5 We don't have any effect on 6 the public health through 7 prescriptions that are being 8 written, the pharmacies that are 9 filling them. We have no control 10 over that. 11 Our responsibility is, in 12 the supply chain, is to ensure 13 that we buy FDA-approved drugs, we 14 keep them securely and we give 15 them to those that dispense those 16 drugs. 17 And the duty that they have, 18 I'm not going to comment on it. 19 And I think I've answered 20 what our responsibility is within 21 the supply chain. 22 BY MR. PIFKO: 23 Q. And I'm not trying to put 24 answers in your mouth. I'm trying to</p>

<p style="text-align: right;">Page 74</p> <p>1 understand what your answer is. 2 A. But that's my answer. 3 Q. But my question is, is 4 public health one of those 5 considerations? Is it or isn't it? 6 You just tell me. I'm 7 not -- you say whatever answer you want 8 to say. 9 MR. NICHOLAS: He's answered 10 the question many, many times. 11 You keep asking him the same 12 question over and over. 13 MR. PIFKO: He's not 14 answering the question. 15 MR. NICHOLAS: I'll object. 16 MR. PIFKO: You can object, 17 but he's not answering. 18 MR. NICHOLAS: I'm 19 objecting. You're saying he's not 20 answering the question and I'm 21 saying he is and he says he is. 22 THE WITNESS: I mean, I can 23 restate that again. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 76</p> <p>1 selling to the public. 2 So, again, you're asking me 3 a question that doesn't apply on 4 the distribution side, because 5 we're selling it -- 6 BY MR. PIFKO: 7 Q. I'm not asking about 8 compliance. 9 MR. NICHOLAS: You're 10 interrupting the witness. 11 THE WITNESS: We're buying 12 it from the manufacturer and we're 13 selling it -- we're selling it to 14 a pharmacy or hospital that has 15 obligations of who they dispense 16 those to and what prescriptions 17 they fill. 18 We're in the middle of the 19 chain. The public health, we 20 don't deal with the public health. 21 BY MR. PIFKO: 22 Q. So you don't think about the 23 public health in carrying out your role 24 in the distribution chain, correct?</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Well, I'll represent to you, 2 you haven't said the word "public health" 3 once when you've talked about what 4 considerations come into 5 AmerisourceBergen's factors when they're 6 complying with the statutes. 7 So I understand from that 8 that public health is not one of those 9 considerations. Is my understanding 10 correct? 11 MR. NICHOLAS: Objection. 12 Object to the form of the 13 question. You're just bullying 14 the witness. 15 THE WITNESS: Our role 16 within the supply chain is from 17 the manufacturer to 18 the dispenser -- 19 BY MR. PIFKO: 20 Q. I'm not asking what your 21 role is. 22 MR. NICHOLAS: Don't 23 interrupt him, please. 24 THE WITNESS: We're not</p>	<p style="text-align: right;">Page 77</p> <p>1 MR. NICHOLAS: Object to the 2 form of the question. 3 THE WITNESS: I've answered 4 the question several times. I 5 think I've made it clear what our 6 role is in the distribution -- 7 BY MR. PIFKO: 8 Q. I didn't ask you what your 9 role is. That's not the question. 10 You've got to answer the question. 11 A. I did answer the question. 12 Q. Do you consider public 13 health when you're carrying out your 14 duties under the statute, under The 15 Controlled Substances Act? 16 MR. NICHOLAS: Objection. 17 I'm going to suggest that the 18 witness does not have to answer 19 this question for the millionth 20 time. 21 MR. PIFKO: He's not. This 22 is a yes-or-no question. 23 MR. NICHOLAS: No, it's not 24 a yes-or-no question.</p>

<p style="text-align: right;">Page 78</p> <p>1 MR. PIFKO: It is.</p> <p>2 MR. NICHOLAS: He does not</p> <p>3 have to answer any question yes or</p> <p>4 no. He's answering the question</p> <p>5 the way he sees fit.</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. Do you consider public</p> <p>8 health when you're carrying out your</p> <p>9 duties under The Controlled Substances</p> <p>10 Act?</p> <p>11 MR. NICHOLAS: Asked and</p> <p>12 answered. Same objections.</p> <p>13 THE WITNESS: I mean, I</p> <p>14 am --</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. It's a yes-or-no question.</p> <p>17 A. It's not a yes-or-no</p> <p>18 question.</p> <p>19 Q. It is.</p> <p>20 A. I've explained it to you,</p> <p>21 and we can go through it again, of where</p> <p>22 we fit in the supply channel.</p> <p>23 Q. I didn't ask where you fit</p> <p>24 in the supply channel.</p>	<p style="text-align: right;">Page 80</p> <p>1 question. We can -- I guess we can go</p> <p>2 back-and-forth here for a while, but we</p> <p>3 aren't -- we do not distribute to the</p> <p>4 public. We distribute --</p> <p>5 Q. I didn't ask you if you</p> <p>6 distribute to the public.</p> <p>7 A. I know. I'm explaining --</p> <p>8 MR. NICHOLAS: You're asking</p> <p>9 about public health. He's</p> <p>10 describing the public.</p> <p>11 THE WITNESS: I'm</p> <p>12 explaining -- we don't sell -- the</p> <p>13 public health -- we don't sell to</p> <p>14 the public. We sell to the</p> <p>15 pharmacies who dispense</p> <p>16 prescriptions written by doctors.</p> <p>17 And we buy from manufacturers.</p> <p>18 We aren't -- we do not</p> <p>19 distribute to the public health.</p> <p>20 And you're asking me a question --</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. I didn't ask you if you</p> <p>23 distribute to the public health.</p> <p>24 When you carry out your</p>
<p style="text-align: right;">Page 79</p> <p>1 A. I know, but --</p> <p>2 MR. PIFKO: We're going to</p> <p>3 call Cohen, because this is pure</p> <p>4 gamesmanship.</p> <p>5 You know, sir, I asked him,</p> <p>6 is public health a consideration</p> <p>7 in your compliance with the</p> <p>8 statute? And he won't answer.</p> <p>9 He's telling me what his duties</p> <p>10 are. I'm not asking. It's a</p> <p>11 yes-or-no question.</p> <p>12 MR. NICHOLAS: He's answered</p> <p>13 many, many times.</p> <p>14 MR. PIFKO: The court is not</p> <p>15 going to appreciate answers like</p> <p>16 this, okay? It's a</p> <p>17 plain-and-simple situation.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. I'm asking you, does public</p> <p>20 health play into your considerations when</p> <p>21 you're carrying out your duties under The</p> <p>22 Controlled Substances Act?</p> <p>23 It's a yes-or-no question.</p> <p>24 A. It's not a yes-or-no</p>	<p style="text-align: right;">Page 81</p> <p>1 duties to maintain effective controls,</p> <p>2 I'm asking if you consider the impact of</p> <p>3 them on public health when you carry out</p> <p>4 your duties?</p> <p>5 A. We consider the duties and</p> <p>6 we ensure that we follow those duties.</p> <p>7 And that's what we consider.</p> <p>8 However you want to phrase</p> <p>9 it, we can -- again, we can discuss this</p> <p>10 for however long you want to spend on</p> <p>11 this. But I think I'm being responsive</p> <p>12 to your question. I think I've explained</p> <p>13 it clearly. And it's not the answer you</p> <p>14 might want.</p> <p>15 But I'm just trying to --</p> <p>16 Q. But you're not answering --</p> <p>17 I don't care. You can say yes or no. I</p> <p>18 don't care what your answer is.</p> <p>19 You've just -- you've got to</p> <p>20 say whether public health is a</p> <p>21 consideration of the company when it's</p> <p>22 carrying out its duties under The</p> <p>23 Controlled Substances Act. That's all</p> <p>24 I'm asking you.</p>

<p style="text-align: right;">Page 82</p> <p>1 A. And I answered the question.</p> <p>2 Q. You didn't.</p> <p>3 A. I did answer the question.</p> <p>4 Q. You never once said that</p> <p>5 AmerisourceBergen considers public</p> <p>6 health --</p> <p>7 A. And I explained --</p> <p>8 Q. -- when carrying out its</p> <p>9 duties.</p> <p>10 A. I explained our process and</p> <p>11 I explained what we take into</p> <p>12 consideration, where we are within the</p> <p>13 supply chain.</p> <p>14 Q. And you agree that public</p> <p>15 health isn't one of those things?</p> <p>16 MR. NICHOLAS: That is not</p> <p>17 what he said. But you're just</p> <p>18 arguing. I mean, why are you</p> <p>19 arguing? Why don't you just ask</p> <p>20 him --</p> <p>21 MR. PIFKO: I'm trying to</p> <p>22 get your answer to the question.</p> <p>23 MR. NICHOLAS: You have a</p> <p>24 30(b)(6) notice with topics.</p>	<p style="text-align: right;">Page 84</p> <p>1 MR. NICHOLAS: I agree time</p> <p>2 is being wasted by you.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. -- for clarity, the question</p> <p>5 being asked to you: In carrying out its</p> <p>6 duties to prevent diversion of Control II</p> <p>7 substances under the controlled schedules</p> <p>8 act -- under The Controlled Substances</p> <p>9 Act, does AmerisourceBergen consider the</p> <p>10 impact on the public health?</p> <p>11 MR. NICHOLAS: Object to the</p> <p>12 form. All my same objections.</p> <p>13 THE WITNESS: Again, we</p> <p>14 ensure that we have products that</p> <p>15 we distribute to the pharmacies</p> <p>16 that are made available to the</p> <p>17 pharmacies to be able to dispense</p> <p>18 to the public.</p> <p>19 I'm not sure -- you're</p> <p>20 asking me a question that I've</p> <p>21 answered several times, given</p> <p>22 where we fit in the supply</p> <p>23 channel, given our</p> <p>24 responsibilities. And as the head</p>
<p style="text-align: right;">Page 83</p> <p>1 MR. PIFKO: And he's burning</p> <p>2 the time. We've burned 20 minutes</p> <p>3 here.</p> <p>4 MR. NICHOLAS: You're</p> <p>5 burning the time. It's Topics A</p> <p>6 through N. You haven't started on</p> <p>7 a single topic. And you haven't</p> <p>8 asked him -- shown him a single</p> <p>9 document.</p> <p>10 So who is burning the time?</p> <p>11 MR. PIFKO: I'm going to ask</p> <p>12 the question one more time. And</p> <p>13 if I don't get an answer, we're</p> <p>14 going to go and we're going to</p> <p>15 call the court and we're going to</p> <p>16 discuss your evasive answers here.</p> <p>17 Because we're not going to be</p> <p>18 doing this all day. And this</p> <p>19 whole last 20 minutes does not</p> <p>20 count towards my time on this</p> <p>21 deposition, because you're just</p> <p>22 wasting everyone's time here.</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. So again for clarity --</p>	<p style="text-align: right;">Page 85</p> <p>1 of that department, my job is --</p> <p>2 my -- what we consider is we</p> <p>3 consider that those products are</p> <p>4 handled appropriately and</p> <p>5 distributed in an appropriate</p> <p>6 manner to the licensed entities</p> <p>7 that we sell to.</p> <p>8 And, you know --</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. Is the impact --</p> <p>11 A. That's the answer.</p> <p>12 Q. -- on the public health one</p> <p>13 of those considerations?</p> <p>14 MR. NICHOLAS: Object to the</p> <p>15 form.</p> <p>16 THE WITNESS: The impact on</p> <p>17 the public health is -- is the</p> <p>18 whole supply channel.</p> <p>19 You're asking me a question</p> <p>20 that we don't interface with the</p> <p>21 public. You're asking me that --</p> <p>22 we interface with the pharmacy and</p> <p>23 the dispenser and we only have our</p> <p>24 obligations. And our</p>

<p style="text-align: right;">Page 86</p> <p>1 understanding and our part in the 2 supply channel is in that -- in 3 that realm. 4 We aren't in the realm of 5 the patient that's coming in or 6 the doctor writing the 7 prescription or what 8 considerations they take before 9 they write a prescription. We 10 aren't involved in any of that, 11 and nor should we be. 12 We're responsible for making 13 sure the product gets from the 14 manufacturer to the pharmacy. And 15 we have an obligation, if there's 16 a suspicious order, to report it. 17 We're not -- we don't have 18 an obligation to vet doctors and 19 understand patient/doctor 20 relationships and all these other 21 areas. That's not our role in the 22 supply chain. 23 BY MR. PIFKO: 24 Q. So you don't consider public</p>	<p style="text-align: right;">Page 88</p> <p>1 A. I did. We consider -- 2 Q. Am I correct that 3 AmerisourceBergen does not consider the 4 public health when carrying out its 5 duties to prevent diversion under The 6 Controlled Substances Act? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: We consider 10 the -- we consider that pharmacies 11 have product accessible to fill 12 the patients' prescriptions. 13 However you want to interpret 14 that, that's up to you. 15 But that is -- the answer 16 is, our consideration is making 17 sure drugs are available. If that 18 means taking into consideration 19 the public safety -- or whatever 20 the -- what you're hammering on 21 here, what is the question? 22 BY MR. PIFKO: 23 Q. Public health. 24 A. Public health.</p>
<p style="text-align: right;">Page 87</p> <p>1 health when you're carrying out your role 2 in the supply chain; is that correct? 3 MR. NICHOLAS: Object to the 4 form of the question. You're 5 mischaracterizing -- 6 mischaracterizing testimony. 7 THE WITNESS: I think I've 8 answered the question. 9 BY MR. PIFKO: 10 Q. I asked you a question. 11 You don't consider public 12 health when you're carrying out your role 13 in the supply chain; is that correct? 14 MR. NICHOLAS: Object to the 15 form of the question. All the 16 same reasons. 17 THE WITNESS: I think I've 18 answered -- I've answered the 19 question. I mean -- 20 BY MR. PIFKO: 21 Q. Answer that question, 22 please. 23 A. I did answer that question. 24 Q. You have not.</p>	<p style="text-align: right;">Page 89</p> <p>1 We make sure we have 2 products available that are safe and 3 secure to supply to the pharmacies. If 4 that means that's considering public 5 health, then that's your interpretation. 6 But to say that we don't 7 have any -- that I haven't answered the 8 question, I don't think that's correct. 9 Q. How about, you're talking 10 about supplying a prescription, a valid 11 prescription. 12 How about, does 13 AmerisourceBergen consider the public 14 health when trying to prevent Control II 15 substances from getting into illegal 16 hands? 17 MR. NICHOLAS: Same 18 objection. 19 THE WITNESS: It's the same 20 question. It's the same answer as 21 the last question. 22 BY MR. PIFKO: 23 Q. What's your answer? 24 MR. NICHOLAS: Same</p>

<p style="text-align: right;">Page 90</p> <p>1 objection.</p> <p>2 THE WITNESS: We adhere to</p> <p>3 our regulatory requirements within</p> <p>4 the confines of a distributor.</p> <p>5 And whether that's the</p> <p>6 consideration of our</p> <p>7 requirements -- I mean, that's --</p> <p>8 that is our role. And that is</p> <p>9 what we consider.</p> <p>10 We want to make sure that we</p> <p>11 only buy from appropriate sources,</p> <p>12 store correctly, and we only sell</p> <p>13 to legitimate sources.</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. We talked about how Schedule</p> <p>16 II substances have a high potential for</p> <p>17 abuse, correct?</p> <p>18 A. They are Schedule II drugs,</p> <p>19 yes.</p> <p>20 Q. And the statute says that</p> <p>21 Schedule II substances have a high</p> <p>22 potential for abuse, correct?</p> <p>23 A. That's why they're Schedule</p> <p>24 II, correct.</p>	<p style="text-align: right;">Page 92</p> <p>1 regulatory responsibilities of who</p> <p>2 we distribute products to.</p> <p>3 We can only control what we</p> <p>4 can control. We can only control</p> <p>5 who we sell drugs to. And we</p> <p>6 consider the impact to ensure that</p> <p>7 we only sell to licensed</p> <p>8 registrants. And that's the</p> <p>9 consideration we make and that's</p> <p>10 our obligation under the</p> <p>11 regulations.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. Does AmerisourceBergen</p> <p>14 believe it has a responsibility to</p> <p>15 protect people in the communities it</p> <p>16 serves from falling victim to abuse of</p> <p>17 Schedule II substances?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form. It is not an appropriate</p> <p>20 question in this deposition. It's</p> <p>21 outside the scope of the 30(b)(6)</p> <p>22 notice.</p> <p>23 THE WITNESS:</p> <p>24 AmerisourceBergen has its</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Does AmerisourceBergen</p> <p>2 consider the impact on the communities it</p> <p>3 serves if these Schedule II substances</p> <p>4 get into the wrong hands?</p> <p>5 MR. NICHOLAS: Object to the</p> <p>6 form. Outside the scope of the</p> <p>7 30(b)(6) notice as well.</p> <p>8 THE WITNESS: Can you</p> <p>9 restate your question?</p> <p>10 MR. PIFKO: Can you read</p> <p>11 back the question, please?</p> <p>12 - - -</p> <p>13 (Whereupon, the court</p> <p>14 reporter read the following part</p> <p>15 of the record:</p> <p>16 "Question: Does</p> <p>17 AmerisourceBergen consider the</p> <p>18 impact on the communities it</p> <p>19 serves if these Schedule II</p> <p>20 substances get into the wrong</p> <p>21 hands?")</p> <p>22 - - -</p> <p>23 THE WITNESS: Again, we</p> <p>24 consider who -- we consider our</p>	<p style="text-align: right;">Page 93</p> <p>1 obligation to ensure that -- I</p> <p>2 mean, you're asking the same</p> <p>3 question, and the answer is the</p> <p>4 same.</p> <p>5 We have regulatory</p> <p>6 responsibilities that are imposed</p> <p>7 on the distributor that we must</p> <p>8 adhere to in order to prevent</p> <p>9 diversion, which we do diligently.</p> <p>10 And we ensure that the customers</p> <p>11 that we sell to are appropriately</p> <p>12 licensed and that -- while those</p> <p>13 drugs are under our control.</p> <p>14 That's what we take into</p> <p>15 consideration and that's what we</p> <p>16 do diligently.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. So does the company consider</p> <p>19 the adverse impacts of substances that it</p> <p>20 sells in the communities that it sells?</p> <p>21 A. Our duty is not to determine</p> <p>22 the types of the products. We only sell</p> <p>23 FDA-approved drugs. We don't approve the</p> <p>24 drugs. We don't schedule the drugs. We</p>

<p style="text-align: right;">Page 94</p> <p>1 don't put them into classifications. We 2 don't prescribe the drugs. And we don't 3 dispense the drugs. 4 All we do is make sure we 5 buy the drugs that are ordered from our 6 licensed customers, FDA and DEA-approved 7 drugs, and we distribute to them and make 8 sure that they have the appropriate 9 schedules. 10 We have nothing to do with 11 the approval of drugs. We have -- 12 nowhere in our scope do we have that 13 responsibility, nor should we. 14 MR. PIFKO: We're going to 15 take a break. 16 VIDEO TECHNICIAN: Going off 17 the record. The time is 10:20 18 a.m. 19 - - - 20 (Whereupon, a brief recess 21 was taken.) 22 - - - 23 VIDEO TECHNICIAN: We're 24 back on record. The time is 10:35</p>	<p style="text-align: right;">Page 96</p> <p>1 opioid products at issue in this 2 litigation can be dangerous? 3 MR. NICHOLAS: Object to the 4 form. 5 THE WITNESS: They're 6 Schedule -- by Schedule II, they 7 are -- that, by itself, identifies 8 them as such. 9 BY MR. PIFKO: 10 Q. And because they're highly 11 addictive, right? 12 MR. NICHOLAS: Object to the 13 form. This is outside the scope 14 of the 30(b)(6). 15 Are you now -- I do want to 16 start making it very clear on the 17 record when we're on -- in 18 30(b)(6) and when we're not. I 19 understand he's also testifying as 20 an individual. 21 Can we be clear that this 22 line of questioning, for example, 23 is outside the scope of the 24 30(b)(6) notice?</p>
<p style="text-align: right;">Page 95</p> <p>1 a.m. 2 BY MR. PIFKO: 3 Q. One little housekeeping 4 thing we forgot to talk about, although 5 I'm sure your counsel discussed it with 6 you before your -- when you were 7 preparing for the deposition. 8 But one of the rules of the 9 jurisdiction where we're in is that 10 you're not allowed to confer about the 11 substance of your testimony during our 12 breaks. 13 Do you understand that? 14 A. Yes. 15 Q. During the last break, did 16 you confer with your counsel about the 17 substance of your testimony? 18 A. No. 19 Q. Do we have an agreement that 20 going forward, you're not going to be 21 doing that during any break? 22 A. Yes. 23 Q. Okay. Great. 24 Do you understand that the</p>	<p style="text-align: right;">Page 97</p> <p>1 MR. PIFKO: You can object 2 to scope, and we can fight about 3 it later. I don't think we're 4 going to agree on the record about 5 what's part of it or not. 6 MR. NICHOLAS: Well, okay. 7 Then I'll just have to keep saying 8 the objection all the time. 9 Object to the scope. 10 Would you mind if I ask 11 you -- 12 MR. PIFKO: Let's just ask 13 the question over again. 14 MR. NICHOLAS: -- can you 15 identify the section? 16 MR. PIFKO: I'm not going to 17 get into that right now. 18 BY MR. PIFKO: 19 Q. I'm going to ask you the 20 question again, sir, so we have a clear 21 record. 22 MR. NICHOLAS: Well, just 23 since we're making a clear record, 24 for the record, I would ask that</p>

<p style="text-align: right;">Page 98</p> <p>1 you identify, if you consider this 2 to be within the 30(b)(6) notice, 3 tell us which topic we're within. 4 MR. PIFKO: Understood. We 5 can meet and confer about that 6 after the deposition. 7 MR. NICHOLAS: After the 8 deposition is too late. The 9 deposition will be over. But, 10 okay. I've made my request for 11 the record. 12 BY MR. PIFKO: 13 Q. So sorry. Let's start over 14 with that. 15 You testified that the 16 controlled substances at issue in this 17 litigation, the opioid products, are -- 18 can be potentially dangerous because 19 they're Schedule II and they are highly 20 addictive, correct? 21 MR. NICHOLAS: Object to the 22 form. 23 Go ahead. 24 THE WITNESS: They are</p>	<p style="text-align: right;">Page 100</p> <p>1 is. 2 BY MR. PIFKO: 3 Q. We agree that they're 4 Schedule II? 5 A. Correct. 6 Q. And we agree that a Schedule 7 II product has been classified by the 8 United States government as highly 9 addictive, agreed? 10 A. High potential of abuse. I 11 don't know -- you're saying "addictive." 12 I know the regulatory requirement is 13 abuse. 14 Q. Do you have an understanding 15 that a product that has a high potential 16 for abuse can be dangerous to people 17 taking it? 18 MR. NICHOLAS: Object to the 19 form. Outside the scope of the 20 notice. 21 THE WITNESS: I'm not -- I'm 22 not a medical doctor. I can't 23 comment on that. 24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 99</p> <p>1 Schedule II because there's a 2 potential for abuse. 3 BY MR. PIFKO: 4 Q. And because there's a 5 potential for abuse, that makes -- 6 there's a potential danger associated 7 with them, correct? 8 MR. NICHOLAS: Object to the 9 form. Outside the scope of the 10 30(b)(6). 11 THE WITNESS: It's their 12 potential for abuse that makes 13 them a Schedule II and they have 14 additional security requirements. 15 BY MR. PIFKO: 16 Q. So you don't have any 17 understanding about -- beyond the fact 18 that they're Schedule II, about what that 19 means for these products? 20 MR. NICHOLAS: Object to the 21 form. Outside the scope of the 22 30(b)(6). 23 THE WITNESS: I'm not 24 understanding what your question</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. So you have no 2 understanding? 3 MR. NICHOLAS: Object to the 4 form. Outside the scope. 5 THE WITNESS: I have no 6 understanding of -- that they have 7 a high abuse potential, yes, I do 8 have an understanding of that. If 9 that correlates to dangerous, I 10 mean, if that's your correlation. 11 BY MR. PIFKO: 12 Q. I'm not making -- I'm just 13 asking for your answer. You can give me 14 whatever answer you'd like, as far as -- 15 as long as you answer the question. 16 But my question just was, do 17 you have an understanding that if -- 18 because the pills have a high potential 19 for abuse, that they could cause 20 potential danger to people? 21 MR. NICHOLAS: Objection. 22 Outside the scope. 23 THE WITNESS: I don't know 24 that for sure.</p>

<p style="text-align: right;">Page 102</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. Do you have an understanding</p> <p>3 that a drug that has a high potential for</p> <p>4 abuse could cause death to people who</p> <p>5 consume that drug?</p> <p>6 MR. NICHOLAS: Objection.</p> <p>7 Outside the scope.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 I don't know.</p> <p>10 I mean, drugs -- people can</p> <p>11 overdose on drugs, and I'm aware</p> <p>12 of that, yes.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Do you have an understanding</p> <p>15 that someone is more likely to suffer</p> <p>16 harm from a Schedule II drug than a drug</p> <p>17 that's not a Schedule II drug?</p> <p>18 MR. NICHOLAS: Objection.</p> <p>19 Outside the scope.</p> <p>20 THE WITNESS: I don't know</p> <p>21 that.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. Let's go back to our duties</p> <p>24 to prevent diversion.</p>	<p style="text-align: right;">Page 104</p> <p>1 Outside the scope.</p> <p>2 THE WITNESS: It calls for a</p> <p>3 conclusion. I don't know that.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. You don't know either way?</p> <p>6 A. I don't know --</p> <p>7 Q. If AmerisourceBergen does</p> <p>8 not maintain effective controls to</p> <p>9 prevent diversion of Schedule II</p> <p>10 substances, they can be diverted,</p> <p>11 correct?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form. Outside the scope.</p> <p>14 THE WITNESS: Again, if we</p> <p>15 don't adhere to our effective</p> <p>16 controls to prevent diversion,</p> <p>17 yes, diversion could occur.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. Let's discuss some of the</p> <p>20 company's policies and procedures with</p> <p>21 respect to diversion.</p> <p>22 Before we do that, do you</p> <p>23 agree that the laws and regulations with</p> <p>24 respect to preventing diversion remain --</p>
<p style="text-align: right;">Page 103</p> <p>1 You recall discussing that?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. You agree that</p> <p>7 AmerisourceBergen has a duty to prevent</p> <p>8 diversion of controlled -- I keep messing</p> <p>9 that up.</p> <p>10 You agree that</p> <p>11 AmerisourceBergen has a duty to prevent</p> <p>12 diversion of Schedule II substances?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form. I'm not sure it's within</p> <p>15 the scope either. But I</p> <p>16 definitely object to the form.</p> <p>17 THE WITNESS: We have a duty</p> <p>18 to -- we have an obligation to</p> <p>19 prevent diversion while the drugs</p> <p>20 are under our control.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. And if you don't carry out</p> <p>23 that duty, diversion can occur, correct?</p> <p>24 MR. NICHOLAS: Objection.</p>	<p style="text-align: right;">Page 105</p> <p>1 have remained unchanged for the last 45</p> <p>2 years?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form. Outside -- definitely</p> <p>5 outside the scope.</p> <p>6 THE WITNESS: The CSA was</p> <p>7 passed in 1970 and in -- the</p> <p>8 federal regulations that regulate</p> <p>9 our responsibilities have not</p> <p>10 changed.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. So it's your understanding</p> <p>13 that there haven't been changes with</p> <p>14 respect to the duties to prevent</p> <p>15 diversion since the passage of the</p> <p>16 statute?</p> <p>17 MR. NICHOLAS: Object to the</p> <p>18 form. Outside the scope. You're</p> <p>19 asking him a legal question.</p> <p>20 THE WITNESS: The</p> <p>21 regulatory -- the regulations have</p> <p>22 not changed.</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. So AmerisourceBergen has the</p>

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1 same duty under the regulations today as
2 it did in 1990, correct?
3 MR. NICHOLAS: Object to the
4 form. You're asking him a legal
5 question. Outside the scope.
6 THE WITNESS: We have a
7 requirement to have effective
8 controls to prevent diversion.
9 BY MR. PIFKO:
10 Q. And that requirement hasn't
11 changed since the passage of The
12 Controlled Substances Act, correct?
13 MR. NICHOLAS: Object to the
14 form. Calls for a legal
15 conclusion. Outside the scope.
16 THE WITNESS: I'm not aware
17 if the regulations have changed.
18 BY MR. PIFKO:
19 Q. You're familiar with the --
20 AmerisourceBergen's practices and
21 procedures under The Controlled
22 Substances Act going back to the '80s,
23 correct?
24 A. The '90s.

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1 Q. Okay. The '90s.
2 And you testified about the
3 company's practices with respect to
4 preventing diversion dating back to the
5 '90s in connection with the West Virginia
6 litigation, correct?
7 MR. NICHOLAS: Objection.
8 Outside the scope.
9 Go ahead.
10 THE WITNESS: I don't
11 remember, but --
12 BY MR. PIFKO:
13 Q. You testified in 2006,
14 correct?
15 A. 2006?
16 Q. '16, sorry.
17 A. Yes.
18 Q. In preparing for this
19 deposition, did you review your
20 transcript of that proceeding?
21 A. I looked at it, yes.
22 Q. When was the last time you
23 looked at it?
24 A. A couple of weeks ago.

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1 Q. Sorry, I'm not quite as
2 organized as I want to be.
3 From the time you started
4 with AmerisourceBergen -- let's back up.
5 You started working for
6 AmerisourceBergen in the 1990s?
7 A. January, correct.
8 Q. Do you remember the exact
9 date and year?
10 A. January 2nd, 1990.
11 Q. Okay. From the time that
12 you started with AmerisourceBergen until
13 about 1998, AmerisourceBergen's
14 monitoring protocol was that every order
15 that exceeded the threshold was deemed to
16 be suspicious, correct?
17 MR. NICHOLAS: Object to the
18 form. Outside the scope.
19 THE WITNESS: So when I
20 started with the company, the
21 process was a two-step process.
22 It was an excessive order report
23 that was produced monthly to send
24 to DEA, and then we also had a

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1 manual process at the distribution
2 centers where the order fillers
3 would identify suspicious orders
4 and report those.
5 BY MR. PIFKO:
6 Q. And the orders were reported
7 after they were shipped, correct?
8 MR. NICHOLAS: Object to the
9 form. Outside the scope.
10 THE WITNESS: Correct.
11 BY MR. PIFKO:
12 Q. Prior to 2007,
13 AmerisourceBergen's system shipped all
14 orders at night and reported any orders
15 that it deemed to be suspicious the next
16 day, correct?
17 MR. NICHOLAS: Objection.
18 Outside the scope.
19 THE WITNESS: That was the
20 program that we developed in
21 conjunction with DEA over a
22 two-year process, that we tested a
23 new -- a process of reporting
24 suspicious orders that we

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1 developed with DEA and then worked
2 with them for two years testing
3 the program until they approved
4 the program in '98.
5 BY MR. PIFKO:
6 Q. I'm not asking for
7 approvals, or I didn't ask you the
8 formulation for the policy. I just asked
9 if that was a correct statement about
10 what the practice was.
11 So I'll just -- let's get a
12 clear answer to the question.
13 A. That was the practice that
14 we did in conjunction with DEA's
15 guidance.
16 Q. Just so we have a clear
17 record, the practice was to ship the
18 orders at night, and then the next day
19 any orders that were identified as
20 suspicious were then reported to the DEA;
21 is that correct?
22 A. Correct.
23 Q. Are you familiar with the
24 term "threshold"?

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1 A. Yes.
2 Q. That's an attribute of your
3 suspicious order monitoring system,
4 correct?
5 MR. NICHOLAS: Object to the
6 form.
7 THE WITNESS: You need to
8 put it into context of time,
9 because the program has been
10 enhanced over the years.
11 BY MR. PIFKO:
12 Q. Well, for the time period
13 for which you're here to testify, which
14 ends in 2014, at all times there's been
15 some threshold requirement in the system,
16 correct?
17 A. Correct.
18 Q. Can you tell me what a
19 threshold is?
20 MR. NICHOLAS: Object to the
21 form.
22 THE WITNESS: A threshold is
23 the -- is a trigger that we have
24 put into the program to create --

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1 to identify an order of interest
2 for further review.
3 BY MR. PIFKO:
4 Q. And so the threshold is the
5 first step in the suspicious order
6 monitoring program, correct?
7 MR. NICHOLAS: Object to the
8 form.
9 THE WITNESS: It is a step.
10 BY MR. PIFKO:
11 Q. Is there a step before the
12 threshold?
13 A. We train our employees at
14 the distribution centers also to be aware
15 of, and train them on suspicious orders.
16 And if they identify a suspicious order,
17 they're to report it.
18 Q. The threshold is a key
19 factor that's used to identify
20 potentially suspicious orders, correct?
21 MR. NICHOLAS: Object to the
22 form.
23 THE WITNESS: It's an
24 identifier that we use

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1 systematically to trigger a
2 potential order of interest.
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

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[REDACTED]

Page 116

[REDACTED]

Page 115

[REDACTED]

Page 117

[REDACTED]

Page 118

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 BY MR. PIFKO:
19 Q. And the other way an order
20 can be identified as an order of interest
21 is if it exceeds a threshold that's
22 defined by AmerisourceBergen?
23 MR. NICHOLAS: Object to the
24 form.

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1 THE WITNESS: There's a
2 threshold that identifies a
3 potentially -- an order of
4 interest, not a suspicious order.
5 And that is -- that is determined
6 by a threshold.
7 BY MR. PIFKO:
8 Q. Are there any other ways an
9 order can be identified as an order of
10 interest?
11 MR. NICHOLAS: Object to the
12 form.
13 I really would appreciate,
14 for the record, some clarity as to
15 the time frame that we're talking
16 about.
17 Are you still unwilling to
18 do that? It seems very -- it
19 seems very plain vanilla.
20 MR. PIFKO: We're talking
21 about the time period for which
22 you were designated, sir.
23 THE WITNESS: Not that I am
24 aware of.

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1 BY MR. PIFKO:
2 Q. Let's talk about the
3 pre-2007 period and thresholds within
4 that period.
5 Do you have an understanding
6 of how AmerisourceBergen calculated
7 thresholds before 2007?
8 MR. NICHOLAS: Objection.
9 Outside the scope.
10 These are being answered in
11 his individual capacity.
12 THE WITNESS: In what time
13 period?
14 BY MR. PIFKO:
15 Q. Well, let's start, you
16 testified in West Virginia that there
17 were certain changes made with respect to
18 the calculation of thresholds from the
19 1990s to 2007, correct?
20 MR. NICHOLAS: Same
21 objection.
22 THE WITNESS: There was a
23 change in '98.
24 BY MR. PIFKO:

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1 Q. Okay. Before 1998, what was
2 the method of calculating a threshold at
3 AmerisourceBergen?
4 MR. NICHOLAS: Same
5 objection. Outside the scope of
6 the 30(b)(6).
7 THE WITNESS: The method of
8 calculating the threshold prior to
9 that was that you would -- all
10 pharmacies would be in one
11 category, hospitals would be in
12 another category. You take all
13 the pharmacies within that
14 category and divide by the number
15 of pharmacies to come up with an
16 average volume for the month per
17 drug category. And then there was
18 a multiplier of three. Any order
19 that was over the threshold amount
20 would be produced an excessive
21 order report.
22 BY MR. PIFKO:
23 Q. But it would still be
24 shipped?

<p style="text-align: right;">Page 122</p> <p>1 A. The product?</p> <p>2 Q. Yes.</p> <p>3 A. Yes.</p> <p>4 Q. After 1998, what was the</p> <p>5 practice with respect to calculating</p> <p>6 thresholds?</p> <p>7 MR. NICHOLAS: Same</p> <p>8 objection. Outside the scope.</p> <p>9 THE WITNESS: So in 1996, we</p> <p>10 worked with DEA, for two years,</p> <p>11 on -- in order to provide DEA with</p> <p>12 more -- we feel, more accurate</p> <p>13 information, that we worked on a</p> <p>14 project to where we would identify</p> <p>15 a customer based upon its own</p> <p>16 purchase history versus all</p> <p>17 pharmacies in one big bucket.</p> <p>18 And then we calculated a</p> <p>19 rolling four-month average of that</p> <p>20 pharmacy's purchases. And then</p> <p>21 created a multiplier of three to</p> <p>22 identify a trigger that would</p> <p>23 identify a suspicious order.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 124</p> <p>1 that two-year period.</p> <p>2 We continued to make changes</p> <p>3 in the program, and that was the final</p> <p>4 calculation that we came up with.</p> <p>5 Q. And that calculation was</p> <p>6 used from 1998 to 2007?</p> <p>7 A. Yes.</p> <p>8 Q. Something happened in 2007,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. You had an enforcement</p> <p>12 action brought against you by the DEA,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. The three times multiplier,</p> <p>16 where does that come from? Scratch that</p> <p>17 question for a second.</p> <p>18 You agree that throughout</p> <p>19 the time period we just discussed, from</p> <p>20 the 1990s to 2007, there was always a</p> <p>21 three times multiplier used in connection</p> <p>22 with calculating the threshold, correct?</p> <p>23 A. So for -- so from 1990 to</p> <p>24 '98, the excessive report for ARCOS</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. That practice was in place</p> <p>2 from 1998 to when?</p> <p>3 MR. NICHOLAS: Object to</p> <p>4 the -- objection. Scope. Same</p> <p>5 objection as I've been stating.</p> <p>6 THE WITNESS: So that -- so</p> <p>7 once we got approval from DEA to</p> <p>8 enact that program nationally, we</p> <p>9 tested it for -- with one DEA</p> <p>10 office and then several, and then</p> <p>11 Washington, D.C. approved it for</p> <p>12 national use throughout in 1998.</p> <p>13 And that was the practice</p> <p>14 until 2007.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. So to be clear, from 2007 --</p> <p>17 I'm sorry, from 1998 to 2007, the</p> <p>18 practice was to take a specific</p> <p>19 customer's order history over the prior</p> <p>20 four-month period and then average the</p> <p>21 order history and multiply that by three,</p> <p>22 and that would be its threshold, correct?</p> <p>23 A. That was the agreed-upon</p> <p>24 process through our testing with DEA over</p>	<p style="text-align: right;">Page 125</p> <p>1 items, which would be your Schedule II</p> <p>2 and reportable IIIs had a three times</p> <p>3 multiplier. Non-ARCOS items, I think it</p> <p>4 might have been six; it might have been a</p> <p>5 higher multiplier.</p> <p>6 Our program that we</p> <p>7 implemented in '98 set them all at three.</p> <p>8 Q. And do you know what the</p> <p>9 methodology was in calculating that three</p> <p>10 times multiplier?</p> <p>11 MR. NICHOLAS: Object to the</p> <p>12 form. And same objection, as to</p> <p>13 outside -- as to the scope here of</p> <p>14 all these questions.</p> <p>15 THE WITNESS: So the three</p> <p>16 times multiplier had been in place</p> <p>17 when I came on board in 1990. And</p> <p>18 that was the program that we were</p> <p>19 submitting and working with DEA in</p> <p>20 1990 all the way up to '96.</p> <p>21 And then when we started to</p> <p>22 work on the new program in</p> <p>23 conjunction with DEA and testing</p> <p>24 it and refining it for that</p>

<p style="text-align: right;">Page 126</p> <p>1 two-year period, the three times 2 multiplier was the multiplier that 3 we -- that, in conjunction with 4 the DEA, decided to use. 5 BY MR. PIFKO: 6 Q. So you don't know where it 7 came from, because it was already in 8 place when you started at the company? 9 MR. NICHOLAS: Object to the 10 form. Outside the scope. 11 THE WITNESS: It was -- 12 correct, it was in place. 13 And then in '96, '7, '8, 14 right in that time period, the 15 Methamphetamine Control Act was 16 passed. And part of that act 17 required the -- it didn't require, 18 it mandated a Suspicious Order 19 Task Force to come up with a 20 process to identify suspicious 21 orders and report it to DEA. 22 I participated on that task 23 force, and that was what came up. 24 And it was with enforcement,</p>	<p style="text-align: right;">Page 128</p> <p>1 And then in '96, when we 2 started working with DEA, we came 3 up and we mutually decided on a 4 three times multiplier. 5 And then the Suspicious 6 Order Task Force was assembled 7 and, again, through their meetings 8 with enforcement agencies and 9 regulators and industry, they came 10 up with a process to identify 11 systematic -- a systematic 12 approach for reporting suspicious 13 orders, and that was a three times 14 multiplier as well. 15 BY MR. PIFKO: 16 Q. This three times multiplier 17 that you relied on through this task 18 force, was there any written 19 documentation establishing that? 20 A. It was in the chemical 21 handling handbook published by the DEA. 22 Q. And that's a document that 23 you relied on for the three times 24 multiplier?</p>
<p style="text-align: right;">Page 127</p> <p>1 state, federal and industry. And 2 we met quarterly. And the 3 Suspicious Order Task Force 4 mandated by the Methamphetamine 5 Control Act came up with the same 6 process with the three times 7 multiplier. And that's the same 8 one we used, which kind of is in 9 line with what we used in '90, 10 what we used in '98, and what we 11 implemented in 2007. 12 BY MR. PIFKO: 13 Q. And so your three times 14 multiplier came from being involved with 15 the task force on -- what did you say? 16 The Methamphetamine Act? 17 A. The three time -- 18 MR. NICHOLAS: Object to the 19 form. Scope. 20 Go ahead. 21 THE WITNESS: So the three 22 times multiplier was already in 23 place in 1990, and those were the 24 reports we were submitting to DEA.</p>	<p style="text-align: right;">Page 129</p> <p>1 A. That was -- 2 MR. NICHOLAS: Same 3 objection. Objections to the form 4 and outside the scope. 5 Go ahead. 6 THE WITNESS: Again, what 7 time frame are you talking about? 8 When we worked with DEA, we 9 relied on our negotiations with 10 DEA. And then in 2007, when we 11 were implementing a new enhanced 12 program, again, in conjunction 13 with DEA, we came up with the 14 three times multiplier. Referring 15 back to the handling manual that 16 was published by DEA, has -- 17 identifying a suspicious order 18 systematically, it was three times 19 multiplier. 20 BY MR. PIFKO: 21 Q. So what I'm asking you is, 22 the three times multiplier that you're 23 relying on with respect to the handling 24 manual that was published by DEA,</p>

<p style="text-align: right;">Page 130</p> <p>1 that's -- what that's called?</p> <p>2 A. Your question is what the</p> <p>3 manual is called? Chemical handling</p> <p>4 guide, I believe. I can't -- I don't</p> <p>5 know the exact name. It was also on the</p> <p>6 DEA's website for some time.</p> <p>7 Q. Did you produce a copy of</p> <p>8 that guide, to your knowledge?</p> <p>9 MR. NICHOLAS: Who are you</p> <p>10 talking about? Are you talking</p> <p>11 about --</p> <p>12 MR. PIFKO: The company.</p> <p>13 MR. NICHOLAS: -- in this</p> <p>14 litigation?</p> <p>15 MR. PIFKO: Yes.</p> <p>16 THE WITNESS: In this --</p> <p>17 MR. NICHOLAS: Objection.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. If you know.</p> <p>20 A. I don't know.</p> <p>21 MR. NICHOLAS: For the</p> <p>22 record, since the implication is</p> <p>23 that maybe we were supposed to</p> <p>24 produce the document or</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. I'll represent to you that</p> <p>2 this is the 2001 version.</p> <p>3 A. Okay.</p> <p>4 Q. Do you believe you've seen</p> <p>5 this before?</p> <p>6 A. I've seen -- I don't know if</p> <p>7 I've seen this version, but I've seen it.</p> <p>8 Q. And when you refer to the</p> <p>9 Chemical Handler's Manual, this is what</p> <p>10 you're referring to?</p> <p>11 A. Yes. And, again, it was</p> <p>12 also on the website as well.</p> <p>13 Q. When you talk about the</p> <p>14 three times multiplier -- there's page</p> <p>15 numbers on the bottom here, Page 43.</p> <p>16 They are side-by-side columns, Appendix</p> <p>17 E-3.</p> <p>18 Can you turn to that?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Are you there?</p> <p>21 A. Yes.</p> <p>22 Q. On Page 43, the page on the</p> <p>23 right, you see there it says, Suspicious</p> <p>24 order reporting system for use in</p>
<p style="text-align: right;">Page 131</p> <p>1 something --</p> <p>2 MR. PIFKO: No accusations.</p> <p>3 Just asking.</p> <p>4 MR. NICHOLAS: Good. It's a</p> <p>5 DEA document prior to 2006.</p> <p>6 - - -</p> <p>7 (Whereupon, Amerisource</p> <p>8 Bergen-Zimmerman Exhibit-4, 2001</p> <p>9 Chemical Handler's Notebook, was</p> <p>10 marked for identification.)</p> <p>11 - - -</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. I'm handing you what's</p> <p>14 marked as Exhibit-4.</p> <p>15 A. Thank you.</p> <p>16 Q. Do you have Exhibit-4 in</p> <p>17 front of you?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Are you reviewing Exhibit-4?</p> <p>20 A. Yes.</p> <p>21 Q. Have you seen this document</p> <p>22 before?</p> <p>23 A. I've seen a version of it.</p> <p>24 I'm not sure what version this is.</p>	<p style="text-align: right;">Page 133</p> <p>1 automated tracking systems.</p> <p>2 Do you see that?</p> <p>3 A. What page are you on?</p> <p>4 Q. It's 43 on the very bottom.</p> <p>5 A. Okay.</p> <p>6 Q. Are you there?</p> <p>7 A. Yes.</p> <p>8 Q. Appendix E-3.</p> <p>9 Do you see that at the top</p> <p>10 of that page? Is that the page you're</p> <p>11 looking at?</p> <p>12 A. Yes.</p> <p>13 Q. And it says, Suspicious</p> <p>14 order reporting system for use in</p> <p>15 automated tracking systems.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Is this where the</p> <p>19 three times multiplier that you were</p> <p>20 talking about comes from?</p> <p>21 A. This is -- yeah, the basis</p> <p>22 of it.</p> <p>23 Q. And it says there -- there's</p> <p>24 terms and definitions and then it's got</p>

<p style="text-align: right;">Page 134</p> <p>1 these numbers, 1, 2, 3, 4. And then it 2 has, Note. 3 Do you see that? 4 A. Yes. 5 Q. And it says, Factor equals 6 3. 7 Do you see that? 8 A. Yes. 9 Q. Is that what you were 10 talking about? 11 A. Yes. 12 Q. And you worked with the task 13 force that was responsible for coming up 14 with this manual? 15 A. I participated on it. I 16 wasn't the -- the industry could have one 17 member, but there was a group of people 18 within the industry. 19 Q. Did you help in drafting any 20 of the language that was in the manual? 21 A. I don't recall. 22 Q. Do you recall if the DEA 23 asked you for comment on the final 24 version of the manual?</p>	<p style="text-align: right;">Page 136</p> <p>1 A. There was a designee of one 2 person. It wasn't me. I wasn't the 3 one-person designee. 4 Q. Do you know who that was? 5 A. I don't. 6 Q. Do you know what company 7 they worked for? 8 A. I want to say it was 9 Cardinal or McKesson, but I'm not sure. 10 It wasn't ABC. 11 Q. Did you work with anyone 12 from Cardinal or McKesson -- so I asked 13 you who the designated person was, and 14 you said maybe it was Cardinal or 15 McKesson. 16 Setting aside who the 17 designated person was, when you were 18 involved with this task force, did you 19 work with anyone from McKesson or 20 Cardinal on the task force? 21 MR. NICHOLAS: Object to the 22 form. Scope. 23 Go ahead. 24 THE WITNESS: I can't</p>
<p style="text-align: right;">Page 135</p> <p>1 A. I don't. 2 Q. Your work on this task force 3 was through the Healthcare Distribution 4 Alliance, which I guess was under a 5 different name at that time? 6 A. They had the -- yeah, there 7 was -- I think there was one member, one 8 slot on the task force for the 9 wholesaler. It was through the HDMA at 10 the time, I believe it was called. 11 Q. And so the DEA said that the 12 HDMA could have a member participate on 13 the task force, and you were the selected 14 member; is that correct? 15 A. No. 16 MR. NICHOLAS: Objection to 17 the form. 18 Go ahead. 19 THE WITNESS: No. No, I was 20 not. I said I participated. The 21 group -- 22 BY MR. PIFKO: 23 Q. There was someone else who 24 was the HDMA member?</p>	<p style="text-align: right;">Page 137</p> <p>1 remember who specifically was 2 involved. 3 BY MR. PIFKO: 4 Q. But you generally feel like 5 maybe McKesson or Cardinal was involved? 6 MR. NICHOLAS: Object to the 7 form. 8 THE WITNESS: Again, I don't 9 know exactly who was involved. I 10 wouldn't be comfortable saying who 11 exactly that would be. 12 BY MR. PIFKO: 13 Q. In 2007, there was a DEA 14 enforcement action against 15 AmerisourceBergen, correct? 16 A. Yes. 17 - - - 18 (Whereupon, Amerisource 19 Bergen-Zimmerman Exhibit-5, 20 ABDCMDL 00279854-54, was marked 21 for identification.) 22 - - - 23 BY MR. PIFKO: 24 Q. I'm handing you what is</p>

<p style="text-align: right;">Page 138</p> <p>1 marked as Exhibit-5. This is a document 2 Bates labeled ABDCMDL 00279854 to 65. 3 Have you seen this document 4 before? 5 A. Yes. 6 Q. Can you tell me what this 7 is? 8 A. This is our settlement and 9 release agreement with the DEA for 10 Orlando distribution center. 11 Q. So as a result of the 12 enforcement action with the DEA, this was 13 the agreement that was reached between 14 AmerisourceBergen and the DEA, correct? 15 MR. NICHOLAS: Object to the 16 form. 17 THE WITNESS: This is the 18 agreement, yes, that was made 19 after the order to show cause. 20 BY MR. PIFKO: 21 Q. Was there any money paid, 22 under this agreement, from 23 AmerisourceBergen to the United States 24 government?</p>	<p style="text-align: right;">Page 140</p> <p>1 And they also wanted us to 2 modify our suspicious order 3 monitoring program to stop orders 4 that we believed -- stop orders 5 that could possibly be suspicious 6 and then to any suspicious -- any 7 order we deem suspicious should 8 not be shipped. 9 BY MR. PIFKO: 10 Q. Did AmerisourceBergen agree 11 to do that? 12 A. We modified our program per 13 this agreement, correct. 14 Q. Can we refer to this 15 agreement as the shipping requirement? 16 MR. NICHOLAS: Object to the 17 form. 18 BY MR. PIFKO: 19 Q. If I say "shipping 20 requirement," can we have an 21 understanding that I'm referring to the 22 idea that you're not supposed to ship an 23 order that's deemed to be suspicious? 24 MR. NICHOLAS: I'll object</p>
<p style="text-align: right;">Page 139</p> <p>1 A. No. 2 Q. But as a result of this 3 agreement, AmerisourceBergen changed its 4 suspicious order monitoring program, 5 correct? 6 MR. NICHOLAS: Object to the 7 form. 8 Go ahead. 9 THE WITNESS: It modified 10 the existing program, yes. 11 BY MR. PIFKO: 12 Q. Can you tell me how the 13 agreement modified the existing program? 14 MR. NICHOLAS: Object to the 15 form. 16 THE WITNESS: So through 17 negotiations with DEA and in 18 enhancing our existing order 19 monitoring program that we had in 20 place at the time, DEA wanted us 21 to include a more in-depth due 22 diligence process in addition to 23 ensuring that we only distribute 24 products to licensed individuals.</p>	<p style="text-align: right;">Page 141</p> <p>1 to the form. 2 I want to understand, are 3 you asking the witness if 4 heretofore we can refer to this 5 agreement as the shipping 6 requirement? Because if so, I'd 7 object to that. 8 BY MR. PIFKO: 9 Q. Do you understand the 10 question? 11 A. Do you want to repeat it? 12 Q. All I'm asking is if, for 13 ease of reference, going forward, we can 14 refer to the idea that you don't ship an 15 order that's been identified as 16 suspicious as the shipping requirement? 17 MR. NICHOLAS: I'll object 18 to the form. And the language. 19 THE WITNESS: We never -- 20 the shipping requirement was never 21 discussed in this document and is 22 not a term that we had used in 23 presentations or requirements. 24 We chose, through our work</p>

<p style="text-align: right;">Page 142</p> <p>1 with the DEA, that if we 2 defined -- ABC defined an order as 3 suspicious, that we would report 4 it and would not ship it. 5 BY MR. PIFKO: 6 Q. Did DEA ever tell you that 7 there was a -- prior to entering into 8 this agreement, did DEA ever tell you 9 that an order that's suspicious should 10 not be shipped? 11 MR. NICHOLAS: Object to the 12 form. 13 THE WITNESS: Did DEA ever 14 tell us? No. 15 BY MR. PIFKO: 16 Q. We talked about this 17 Chemical Handler's Manual and how it 18 provided guidance on the three times 19 threshold requirement, correct? 20 A. Yes. 21 Q. Did you take any guidance 22 from that manual about the idea of not 23 shipping an order that's deemed to be 24 suspicious?</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. That's good. Thank you. 2 A. Do you want me to read the 3 whole thing? 4 Q. That's all I was asking you 5 to read. 6 MR. NICHOLAS: You asked him 7 to read the whole thing. 8 MR. PIFKO: You can read to 9 yourself the rest of that 10 paragraph, if you please. But all 11 I wanted you to read for the 12 record was that portion. 13 MR. NICHOLAS: You asked 14 him, for the record, to read the 15 whole paragraph. Are you now 16 telling him you don't want him to 17 read the whole paragraph? 18 MR. PIFKO: You don't need 19 to read any more. 20 BY MR. PIFKO: 21 Q. Did you ever consider 22 foregoing some transactions, as a result 23 of reading this document? 24 MR. NICHOLAS: Object to the</p>
<p style="text-align: right;">Page 143</p> <p>1 MR. NICHOLAS: Object to the 2 form. Outside the scope. 3 THE WITNESS: No. 4 BY MR. PIFKO: 5 Q. Let's take a look at that 6 manual again. I'd like to direct your 7 attention to Page 21 of that document. 8 Exhibit-4, for the record. 9 Looking at the second full 10 paragraph of Page 21, can you read that 11 to me? 12 A. On Page 21? You want me to 13 read it out loud? 14 Q. Yes, please. 15 A. When a regulated person 16 suspects that an order may be intended 17 for illicit purposes, good practice 18 requires that every reasonable effort be 19 made to resolve those suspicions. In 20 addition to making the required reports, 21 the transaction should not be completed 22 until the customer is able to eliminate 23 the suspicions. The distributor may have 24 to forego some transactions.</p>	<p style="text-align: right;">Page 145</p> <p>1 form. Outside the scope. 2 THE WITNESS: No. 3 - - - 4 (Whereupon, Amerisource 5 Bergen-Zimmerman Exhibit-6, 6 ABDCMDL 00269683-694, was marked 7 for identification.) 8 - - - 9 BY MR. PIFKO: 10 Q. I'm handing you what has 11 been marked as Exhibit-6. For the 12 record, these are a series of letters 13 from the Department of Justice, Bates 14 labeled ABDCMDL 00269683 to 694. 15 For the record, there's four 16 letters in this packet. This is how they 17 were produced. They are dated -- the one 18 in the back is the earliest, it's on Page 19 ABDCMDL 00269691, and it's dated 20 September 27th, 2006. And there's 21 another one dated February 7th, 2007; 22 another one dated December 27th, 2007; 23 and another one with a stamp on it, June 24 12th, 2012.</p>

<p style="text-align: right;">Page 146</p> <p>1 Have you seen these before?</p> <p>2 A. I have.</p> <p>3 Q. These are what we refer to</p> <p>4 as the Dear Registrant letters.</p> <p>5 Have you heard that term</p> <p>6 before?</p> <p>7 A. I have, since -- yep. Yes.</p> <p>8 Q. Did AmerisourceBergen</p> <p>9 receive these letters from the Department</p> <p>10 of Justice? Let's start with the first</p> <p>11 one, dated September 27th, 2006, Bates</p> <p>12 label ABDCMDL 00269691.</p> <p>13 Are you there?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Did AmerisourceBergen</p> <p>16 receive a copy of this letter?</p> <p>17 A. I believe one or more of our</p> <p>18 distribution centers did.</p> <p>19 Q. When you were at the</p> <p>20 company, at that time, did you receive a</p> <p>21 copy of that letter?</p> <p>22 A. I eventually saw a copy of</p> <p>23 the letter. I never received one from</p> <p>24 DEA.</p>	<p style="text-align: right;">Page 148</p> <p>1 just review the letter before you</p> <p>2 ask -- before he's asked questions</p> <p>3 about portions of it?</p> <p>4 MR. PIFKO: You can review</p> <p>5 the letter.</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. Do you believe this a --</p> <p>8 while you're reviewing it, do you believe</p> <p>9 this is a true and correct copy of the</p> <p>10 September 27th, 2006 letter from the</p> <p>11 Department of Justice?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: It looks the</p> <p>15 same.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. And this is something that</p> <p>18 the company would have maintained in its</p> <p>19 files in the ordinary course of business?</p> <p>20 MR. NICHOLAS: Could you let</p> <p>21 him finish reading the letter,</p> <p>22 please, before you ask?</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. I just wanted to ask you</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. But someone in the company</p> <p>2 provided one to you?</p> <p>3 A. Yes.</p> <p>4 Q. And it was on or around the</p> <p>5 time of the letter?</p> <p>6 A. It was some time after. I</p> <p>7 don't recollect how far after.</p> <p>8 Q. Like a month after, or less?</p> <p>9 A. It could have been a month</p> <p>10 or two.</p> <p>11 Q. But not, like, a year later?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: Not that I</p> <p>15 recollect.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. I want to point you to some</p> <p>18 provisions in this letter. There's a</p> <p>19 heading, Background.</p> <p>20 Do you see that?</p> <p>21 A. What page are you on?</p> <p>22 Q. On ABDC 00269691.</p> <p>23 MR. NICHOLAS: Could the</p> <p>24 witness have the opportunity to</p>	<p style="text-align: right;">Page 149</p> <p>1 about a couple of provisions in the</p> <p>2 letter.</p> <p>3 A. Just one second.</p> <p>4 Okay.</p> <p>5 Q. My last question was, is</p> <p>6 this letter something that would have</p> <p>7 been maintained by the company in the</p> <p>8 ordinary course of business?</p> <p>9 A. We would have it.</p> <p>10 Q. So let's go to the first</p> <p>11 page of this letter which, again, for the</p> <p>12 record, is ABDCMDL 00269691.</p> <p>13 Are you there?</p> <p>14 A. Page 1, yes.</p> <p>15 Q. Okay. There's a heading</p> <p>16 here, Background.</p> <p>17 Do you see that?</p> <p>18 A. Oh, yes. At the top. Yes.</p> <p>19 Q. It says, As each of you is</p> <p>20 undoubtedly aware, the abuse (nonmedical</p> <p>21 use) of controlled prescription drugs is</p> <p>22 a serious and growing health problem in</p> <p>23 this country.</p> <p>24 Do you see that?</p>

<p style="text-align: right;">Page 150</p> <p>1 A. Yes.</p> <p>2 Q. Do you agree that the DEA</p> <p>3 communicated that to AmerisourceBergen on</p> <p>4 September 27th, 2006?</p> <p>5 MR. NICHOLAS: Object to the</p> <p>6 form.</p> <p>7 THE WITNESS: So it states.</p> <p>8 It's stated in the letter.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. And you agree that the</p> <p>11 Department of Justice communicated that</p> <p>12 to AmerisourceBergen?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form.</p> <p>15 THE WITNESS: We received</p> <p>16 this letter, yes.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. The letter also says, The</p> <p>19 CSA was designed by Congress to combat</p> <p>20 diversion by providing for a closed</p> <p>21 system of drug distribution in which all</p> <p>22 legitimate handlers of controlled</p> <p>23 substances must obtain a DEA</p> <p>24 registration, and as a condition of</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. It then says, If the closed</p> <p>2 system is to function properly as</p> <p>3 Congress envisioned, distributors must be</p> <p>4 vigilant in deciding whether a</p> <p>5 prospective customer can be trusted to</p> <p>6 deliver controlled substances only for</p> <p>7 lawful purposes.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Do you agree with that</p> <p>11 statement?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: I think -- I</p> <p>15 think there's a lot of inference</p> <p>16 there.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. In what way?</p> <p>19 A. Congress -- he's indicating</p> <p>20 what Congress envisioned. I'm not sure</p> <p>21 what they're basing -- I'm not sure where</p> <p>22 they're drawing that from.</p> <p>23 Q. So you don't agree with that</p> <p>24 statement?</p>
<p style="text-align: right;">Page 151</p> <p>1 maintaining such registration, must take</p> <p>2 reasonable steps to ensure that their</p> <p>3 registration is not being utilized as a</p> <p>4 source of diversion.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you agree with that</p> <p>8 statement?</p> <p>9 MR. NICHOLAS: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: We have a</p> <p>12 responsibility to make sure we</p> <p>13 have adequate controls to prevent</p> <p>14 diversion, yes.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. And so you agree with the</p> <p>17 characterization here in this letter?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form. The letter is the letter.</p> <p>20 THE WITNESS: I agree that</p> <p>21 we must adhere to our regulatory</p> <p>22 requirements under the Code of</p> <p>23 Federal Regulations.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 153</p> <p>1 MR. NICHOLAS: That's not</p> <p>2 what he said. Objection.</p> <p>3 THE WITNESS: I'm just</p> <p>4 stating that there's a statement</p> <p>5 made in there that Congress</p> <p>6 envisioned what the scope was.</p> <p>7 And I'm not sure what</p> <p>8 they're basing that upon. If I</p> <p>9 could see some documentation of</p> <p>10 what Congress indicated as the --</p> <p>11 you know, of our duty of</p> <p>12 vigilant -- deciding whether a</p> <p>13 customer can be trusted to</p> <p>14 deliver, that's what they</p> <p>15 envision, I'd like to know in what</p> <p>16 context.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. I'm just asking if -- I'm</p> <p>19 not asking you what DEA meant.</p> <p>20 I'm asking, based on your</p> <p>21 understanding of what that sentence</p> <p>22 means, do you agree with it?</p> <p>23 A. I don't know --</p> <p>24 MR. NICHOLAS: Object to the</p>

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1 form.
2 THE WITNESS: I don't know
3 what they envisioned. I don't
4 know what they're basing that on.
5 You're asking me to make a
6 conclusion off of something I
7 don't have all the facts about.
8 BY MR. PIFKO:
9 Q. So you don't have an
10 understanding either way about whether
11 distributors must be vigilant in deciding
12 whether a prospective customer can be
13 trusted to deliver controlled substances
14 only for lawful purposes?
15 A. We need --
16 MR. NICHOLAS: Object to the
17 form.
18 Go ahead.
19 THE WITNESS: We need to
20 ensure that the customers that we
21 sell to have been appropriately
22 licensed and in good standing with
23 DEA and the Boards of Pharmacy. I
24 agree with that.

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1 BY MR. PIFKO:
2 Q. It says, Congress has
3 expressly declared that the illegal
4 distribution of controlled substances has
5 a substantial and detrimental effect on
6 the health and general welfare of the
7 American people.
8 Do you see that?
9 A. Yes.
10 Q. Do you agree with that
11 statement?
12 MR. NICHOLAS: Object to the
13 form.
14 BY MR. PIFKO:
15 Q. It's cites 21 USC.8012.
16 A. If Congress has expressly
17 declared that, then I agree that Congress
18 expressly declared that there's a
19 substantial and detrimental effect to the
20 American wellbeing.
21 Q. Do you have an understanding
22 that in attempting to prevent illegal
23 distribution of controlled substances,
24 the company's actions can have an impact

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1 on the health and general welfare of the
2 American people?
3 MR. NICHOLAS: Object to the
4 form.
5 THE WITNESS: Can you just
6 restate that?
7 BY MR. PIFKO:
8 Q. I said, do you have an
9 understanding that in attempting to
10 prevent illegal distribution of
11 controlled substances, that the company's
12 actions can have an impact on the health
13 and general welfare of the American
14 people?
15 MR. NICHOLAS: Object to the
16 form.
17 THE WITNESS: Yeah, I -- can
18 you break it into two or three
19 questions? Because you lumped a
20 lot in there. Can you --
21 BY MR. PIFKO:
22 Q. What part is tricking you
23 up?
24 A. The first part.

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1 Q. We agree that
2 AmerisourceBergen has a duty to take
3 actions to prevent illegal distribution
4 of controlled substances, agree?
5 MR. NICHOLAS: Object to the
6 form.
7 THE WITNESS: We have a duty
8 to make sure that we follow our
9 regulatory responsibilities to
10 prevent diversion, I agree.
11 BY MR. PIFKO:
12 Q. And then the question is, in
13 carrying out that role, do you believe
14 that AmerisourceBergen's actions can have
15 an impact on the health and general
16 welfare of the American people?
17 MR. NICHOLAS: Object to the
18 form.
19 THE WITNESS: Again, we go
20 back to what we were talking about
21 before, is that, yes, we have to
22 follow our policy and procedure to
23 ensure that we have effective
24 controls to prevent diversion.

<p style="text-align: right;">Page 158</p> <p>1 And I'm not sure what more 2 we can say. We have an obligation 3 to ensure that we get medications 4 to the pharmacies in need. And, 5 yes, we do have an obligation to 6 help with providing access for 7 medications to the patients that 8 need them, which I guess would be 9 the public. 10 BY MR. PIFKO: 11 Q. How about in preventing 12 illegal substances from being 13 distributed, do you believe that 14 AmerisourceBergen's actions can have an 15 impact on the health and general welfare 16 of the American people? 17 MR. NICHOLAS: Object to the 18 form. 19 THE WITNESS: As long as 20 we -- again, this implies chain 21 under our control, we can do what 22 we can under our control and our 23 responsibilities and we do that 24 diligently.</p>	<p style="text-align: right;">Page 160</p> <p>1 need to dispense them to their 2 patients and that there's access 3 to patients that have been issued 4 a prescription and fill it at the 5 pharmacy, which would have an 6 impact on the health and safety of 7 the public. 8 BY MR. PIFKO: 9 Q. So you said by not having a 10 diversion occurring within the 11 distribution center, then that's how we 12 impact the health and welfare of the 13 public. 14 MR. NICHOLAS: Object to the 15 form. 16 BY MR. PIFKO: 17 Q. Do you recall saying that? 18 MR. NICHOLAS: Object to the 19 form. Are you asking what he said 20 a minute ago and just reading the 21 transcript? Is that what you're 22 doing? 23 THE WITNESS: We have an 24 obligation to maintain -- I -- I</p>
<p style="text-align: right;">Page 159</p> <p>1 And, you know, that's -- and 2 by not having a diversion 3 occurring within the distribution 4 centers, then that's how we impact 5 the health and welfare of the 6 public, by not having that occur 7 within our distribution centers. 8 BY MR. PIFKO: 9 Q. Okay. And if it does occur, 10 it could have an adverse impact on the 11 health and general welfare of the 12 American public, correct? 13 MR. NICHOLAS: Object to the 14 form. 15 THE WITNESS: I don't know 16 that. Again, we can go 17 back-and-forth again. I think we 18 covered this ground. 19 But we have on obligation to 20 have effective controls to prevent 21 diversion, which we follow. And 22 we also have an obligation to 23 ensure that we get FDA-approved 24 medications to the pharmacies that</p>	<p style="text-align: right;">Page 161</p> <p>1 don't understand what you mean by 2 that. 3 BY MR. PIFKO: 4 Q. All I'm asking is, you just 5 said: By not having diversion occurring 6 within the distribution centers, then 7 that's how we impact the health and 8 general welfare of the public. 9 A. That's a -- 10 Q. That's a quote I just read 11 from the transcript. 12 A. Then that's -- 13 Q. Okay. Do you agree to 14 having said that? 15 A. -- what I stated. 16 Again, it goes back to the 17 same issue that you have been asking me, 18 and I've answered it several times, of 19 what our role in the supply channel is, 20 how we -- what things we have in place to 21 prevent diversion. And that is our role 22 and responsibility. 23 We don't touch the patient. 24 Q. I haven't asked you a</p>

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1 question.
2 A. I know you haven't. But you
3 continue --
4 MR. NICHOLAS: Let him
5 finish.
6 BY MR. PIFKO:
7 Q. You're giving a speech.
8 All I asked you --
9 A. Well, you're reading back
10 what I just said.
11 Q. The question I asked is what
12 you said. Did you say that? And you're
13 giving a speech.
14 MR. NICHOLAS: Hold on.
15 Hold on. If you're going to go
16 back and read him a portion of
17 what he just said a minute ago --
18 MR. PIFKO: I didn't ask him
19 to give a speech.
20 MR. NICHOLAS: I think you
21 then can also let him answer your
22 question.
23 MR. PIFKO: No. I just
24 said, did you say that? That's

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1 all the question was. And he goes
2 on a five-minute speech.
3 That's not what the question
4 was.
5 MR. NICHOLAS: First of all,
6 it's been about 20 seconds that
7 he's talking. If he wanted to
8 talk for an hour, he could. But
9 he's not doing that. He's trying
10 to answer your questions.
11 MR. PIFKO: All my question
12 was, was did I read it right?
13 MR. NICHOLAS: You're just
14 arguing with him.
15 MR. PIFKO: No, my question
16 was --
17 MR. NICHOLAS: You're just
18 arguing.
19 MR. PIFKO: You're wasting
20 our time, okay?
21 MR. NICHOLAS: Just ask him
22 questions. Yeah --
23 BY MR. PIFKO:
24 Q. I'm trying to ask you a

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1 question, sir. I don't want a speech to
2 questions I'm not asking.
3 All I asked you was if I had
4 read that portion correctly?
5 MR. NICHOLAS: You know
6 what, you don't tell him that you
7 don't want a speech or you do want
8 a speech. Let him answer your
9 questions. Don't lecture him.
10 MR. PIFKO: We're going to
11 have to have this transcript
12 evaluated by the court for your
13 lack of cooperation and we're
14 going to seek appropriate remedies
15 at the appropriate time.
16 MR. NICHOLAS: That's fine.
17 Do whatever you want. Let him
18 answer your questions.
19 MR. PIFKO: I'm trying to
20 ask him, but he's not letting me
21 ask questions, because he's
22 talking about and giving speeches.
23 MR. NICHOLAS: He's not
24 letting you answer questions

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1 because he is answering questions.
2 MR. PIFKO: He's talking
3 about things I'm not asking him.
4 MR. NICHOLAS: You're just
5 arguing. Go ahead.
6 BY MR. PIFKO:
7 Q. You said -- I'm reading from
8 the transcript -- By not having diversion
9 occurring within the distribution center,
10 then that's how we impact the health and
11 general welfare of the public.
12 Agreed?
13 A. That's what I said.
14 Q. Okay. And so my question
15 is, if diversion does occur, then that
16 could have an adverse impact on the
17 health and welfare of the public.
18 Do you agree?
19 MR. NICHOLAS: Object to the
20 form. You really are arguing.
21 Go ahead.
22 THE WITNESS: If there's
23 diversion occurring -- I mean,
24 that's the reason why we have

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1 controls in place, to protect and
2 to guard against diversion.
3 If a diversion occurs, then
4 that would have an impact.
5 BY MR. PIFKO:
6 Q. Thank you.
7 Let's go to the second page
8 of the letter, ABDCMDL 00269692.
9 Are you on that page?
10 A. Yes.
11 Q. I want to read you a section
12 from the second paragraph there; second
13 paragraph, second sentence.
14 Moreover, all registrants,
15 manufacturers, distributors, pharmacies
16 and practitioners share responsibility
17 for maintaining appropriate safeguards
18 against diversion.
19 Do you agree with that
20 statement?
21 A. Yes.
22 Q. It says, a little bit
23 further down, Given the extent of
24 prescription drug abuse in the United

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1 States, along with the dangerous and
2 potentially lethal consequences of such
3 abuse, even just one distributor that
4 uses its DEA registration to facilitate
5 diversion can cause enormous harm.
6 Do you agree with that
7 statement?
8 MR. NICHOLAS: I'll object
9 to the form. And ask if you're
10 going to read portions of this
11 paragraph, that you read the first
12 sentence of the paragraph as well.
13 THE WITNESS: I don't know
14 the answer to your question.
15 Because -- I don't know.
16 BY MR. PIFKO:
17 Q. Let's go down a little bit
18 further toward the third-to-last
19 paragraph.
20 In addition -- it says,
21 Thus, in addition to reporting all
22 suspicious orders, a distributor has a
23 statutory responsibility to exercise due
24 diligence to avoid filling suspicious

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1 orders that might be diverted into
2 other-than-legitimate medical,
3 scientific, and industrial channels.
4 Do you see that?
5 A. I do.
6 Q. Do you agree with that
7 statement?
8 MR. NICHOLAS: Object to the
9 form.
10 THE WITNESS: Given the --
11 no, I don't agree.
12 BY MR. PIFKO:
13 Q. And what's the basis for
14 your disagreement?
15 A. Because up until this
16 letter, all of our interactions with DEA
17 and our consultations and meetings and
18 presentations, there had never been any
19 indication, up until this time, that we
20 were to avoid filling suspicious orders.
21 It's the first time I've seen that
22 statement.
23 Q. Let's go to the third page,
24 ABDCMDL 00269693. Tell me when you're

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1 there.
2 A. Yes.
3 Q. Do you see the heading at
4 the top is, Circumstances That Might Be
5 Indicative of Diversion?
6 Do you see that?
7 A. Yes.
8 Q. It's got a list of four
9 items.
10 Do you see that?
11 A. Yes.
12 Q. Do you believe that the DEA
13 communicated this information to you?
14 MR. NICHOLAS: Object to the
15 form.
16 THE WITNESS: In this
17 letter? We received this letter,
18 yes.
19 BY MR. PIFKO:
20 Q. And then there's another
21 paragraph with ten items.
22 Do you see that?
23 A. Yes.
24 Q. Do you believe that the DEA

<p style="text-align: right;">Page 170</p> <p>1 communicated this information to you?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: In -- with</p> <p>5 this letter, yes.</p> <p>6 - - -</p> <p>7 (Whereupon, Amerisource</p> <p>8 Bergen-Zimmerman Exhibit-7,</p> <p>9 ABDCMDL 00000101-122, was marked</p> <p>10 for identification.)</p> <p>11 - - -</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. I'm handing you what has</p> <p>14 been marked as Exhibit-7.</p> <p>15 Please take a moment to</p> <p>16 review this document and let me know when</p> <p>17 you're done.</p> <p>18 For the record, it's Bates</p> <p>19 labeled ABDCMDL 00000101 through 122.</p> <p>20 Let me know when you're done</p> <p>21 reviewing the document, sir.</p> <p>22 A. Okay.</p> <p>23 Q. Have you seen this document</p> <p>24 before?</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. Do you have any reason to</p> <p>2 dispute that this is a document from</p> <p>3 AmerisourceBergen's files?</p> <p>4 A. No.</p> <p>5 Q. Do you dispute that this is</p> <p>6 a true and correct copy of what was in</p> <p>7 this document?</p> <p>8 A. I don't know that, because</p> <p>9 I'm not familiar with this presentation.</p> <p>10 Q. You just took some time to</p> <p>11 review the presentation, correct?</p> <p>12 A. Yes.</p> <p>13 Q. The title of the</p> <p>14 presentation, on the first page, is, ABC</p> <p>15 Diversion Control Program, Effective June</p> <p>16 25, 2007.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. You're familiar with the</p> <p>20 changes that AmerisourceBergen made to</p> <p>21 its diversion control program as a result</p> <p>22 of the settlement with the DEA, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Does this reflect changes</p>
<p style="text-align: right;">Page 171</p> <p>1 A. I don't know if I've seen</p> <p>2 this exact document, but I've seen</p> <p>3 presentations that have this material in</p> <p>4 them.</p> <p>5 Q. When you say that, what do</p> <p>6 you mean by that?</p> <p>7 MR. NICHOLAS: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: I'm saying</p> <p>10 that many of these slides in here</p> <p>11 look familiar. I don't know if</p> <p>12 I've seen this exact presentation.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Okay. You say you've seen</p> <p>15 some of the slides but maybe not all of</p> <p>16 the slides, or do you think you've seen</p> <p>17 all of the slides?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form.</p> <p>20 THE WITNESS: I think</p> <p>21 I've -- I can't say I've seen</p> <p>22 every single slide, but I'm</p> <p>23 familiar with the information.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 173</p> <p>1 that were made to the policy as a result</p> <p>2 of that settlement?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: Yes, I believe</p> <p>6 so.</p> <p>7 BY MR. PIFKO:</p> <p>8 Q. Having reviewed this</p> <p>9 document, do you believe this document</p> <p>10 discusses the nature of</p> <p>11 AmerisourceBergen's program as of June</p> <p>12 25th, 2007?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form.</p> <p>15 THE WITNESS: I believe so.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. Do you know who Steve Mays</p> <p>18 is?</p> <p>19 A. Yes.</p> <p>20 Q. Is he someone that works</p> <p>21 under you?</p> <p>22 A. Yes, he does.</p> <p>23 Q. Does he still work at the</p> <p>24 company?</p>

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1 A. He does.
2 Q. His title at this time is
3 senior director, corporate security and
4 regulatory affairs.
5 Do you see that?
6 A. Yes.
7 Q. When he was in that title,
8 he reported to you?
9 A. Yes.
10 Q. Was he a direct report to
11 you at this time?
12 A. He was.
13 Q. Did you instruct him to give
14 presentations about AmerisourceBergen's
15 diversion control program as it was
16 changed from the DEA settlement?
17 A. He did presentations, yes.
18 Q. Do you know to whom he did
19 presentations?
20 A. I don't know specifically.
21 Q. You said you've seen
22 versions of this document.
23 Do you believe this was
24 something that would have been presented

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1 to people inside the company?
2 MR. NICHOLAS: Object to the
3 form. Mischaracterizes the
4 testimony.
5 THE WITNESS: It doesn't say
6 who this was actually presented
7 to. So I don't know.
8 BY MR. PIFKO:
9 Q. Let's go to the first page
10 of the document here. It says,
11 Regulatory responsibility.
12 Do you see that?
13 A. Yes.
14 Q. Have you seen this slide
15 before?
16 A. I understand -- I don't know
17 if I've seen this slide. But, yes, I've
18 seen a slide that has this information on
19 it, yes.
20 Q. Can you tell me what this
21 is?
22 MR. NICHOLAS: Object to the
23 form.
24 THE WITNESS: It's just a

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1 statement of the CFR1301.71.
2 BY MR. PIFKO:
3 Q. It's a statement of
4 AmerisourceBergen's regulatory
5 responsibility under this provision; is
6 that correct?
7 MR. NICHOLAS: Object to the
8 form.
9 THE WITNESS: It's the
10 statement of -- for all
11 distributors. It's 1301.71(a).
12 BY MR. PIFKO:
13 Q. I'm not trying to trick you
14 into something.
15 I'm just asking, is it your
16 understanding that 1301.71(a) applies to
17 AmerisourceBergen?
18 MR. NICHOLAS: Object to the
19 form.
20 Go ahead.
21 THE WITNESS: It does apply
22 to AmerisourceBergen as a
23 registrant.
24 BY MR. PIFKO:

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1 Q. And it says, All applicants
2 and registrants shall provide effective
3 controls and procedures to guard against
4 theft and diversion of controlled
5 substances.
6 Do you see that?
7 A. Yes.
8 Q. Do you agree that's what it
9 says?
10 A. That's what it says.
11 Q. And you agree that's a
12 regulatory responsibility that
13 AmerisourceBergen has?
14 A. Yes.
15 Q. Let's go to the next page.
16 It says, How?
17 Do you see that?
18 A. Yes.
19 Q. Do you have an
20 understanding, then, this is how
21 AmerisourceBergen is supposed to carry
22 out its responsibility to provide
23 effective controls and procedures to
24 guard against theft and diversion of

<p style="text-align: right;">Page 178</p> <p>1 controlled substances?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: It appears</p> <p>5 that it lists the different</p> <p>6 elements under that section and</p> <p>7 states the relating Code of</p> <p>8 Federal Regulation's section and</p> <p>9 how companies may -- again, I</p> <p>10 don't know who this was to,</p> <p>11 whether it was internally, to</p> <p>12 distributors. I'm not sure who</p> <p>13 the customer was of the</p> <p>14 presentation.</p> <p>15 But it's just reiterating</p> <p>16 items that fall underneath each of</p> <p>17 the CFR sections.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. Do you believe -- or do you</p> <p>20 have an understanding that</p> <p>21 AmerisourceBergen has a responsibility to</p> <p>22 comply with the CFR sections identified</p> <p>23 here?</p> <p>24 MR. NICHOLAS: Object to the</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. And afterwards it says, No</p> <p>2 problem.</p> <p>3 Let's look at the first one.</p> <p>4 A. Yes.</p> <p>5 Q. Physical security controls.</p> <p>6 No problem.</p> <p>7 Do you see that?</p> <p>8 A. Yes, I see that.</p> <p>9 Q. Records and reports of</p> <p>10 registrants. No problem.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Orders for filling -- for</p> <p>14 Schedule I and II controlled substances.</p> <p>15 No problem.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Other security controls-make</p> <p>19 a good faith inquiry; report suspicious</p> <p>20 orders; report significant losses. Gray</p> <p>21 area.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you have an understanding</p>
<p style="text-align: right;">Page 179</p> <p>1 form.</p> <p>2 THE WITNESS: These are</p> <p>3 sections that we -- that fall</p> <p>4 under the distributor</p> <p>5 requirements, yes.</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. And do you believe that they</p> <p>8 apply to AmerisourceBergen?</p> <p>9 A. Yes.</p> <p>10 Q. Under CFR1301.74 -- do you</p> <p>11 see that at the bottom?</p> <p>12 A. Yes.</p> <p>13 Q. It says -- for all the other</p> <p>14 ones above, it says a statement of the</p> <p>15 regulation with a short summary, and it</p> <p>16 says, No problem.</p> <p>17 Do you see that?</p> <p>18 A. I'm sorry, where?</p> <p>19 Q. If you look at each</p> <p>20 regulation, it's got a number, a bold</p> <p>21 heading, a subject of that, and then it</p> <p>22 has a brief summary of it.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 181</p> <p>1 about what it means by "gray area"?</p> <p>2 A. I think what they're</p> <p>3 referring to, under these regulations,</p> <p>4 are -- say 1301.72, physical security</p> <p>5 controls, that the DEA has been very</p> <p>6 specific.</p> <p>7 So vaults need to have</p> <p>8 poured-in-place concrete, 8 inches thick,</p> <p>9 half-inch rebar, 6 inches on center. And</p> <p>10 cages have to be developed of 10-gauge</p> <p>11 steel. Openings can't be more than 2.5</p> <p>12 inch diameter across. The structure has</p> <p>13 to be built on 6-inch -- 1-inch posts</p> <p>14 with 6 inches apart. They're very</p> <p>15 specific.</p> <p>16 With regards to reports, it</p> <p>17 explains exactly how often you have to do</p> <p>18 inventories, how to annotate it. It's</p> <p>19 black-and-white.</p> <p>20 And then also with the</p> <p>21 schedule order 222 forms, it states that</p> <p>22 you can't complete a line that has any</p> <p>23 alterations. It's very black-and-white.</p> <p>24 And when it gets to</p>

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1 reporting suspicious orders, it's very --
2 a gray area, because it's not
3 black-and-white. It doesn't say over
4 five or less than four. And with
5 significant losses, there's no
6 definition. Is it a thousand? Is it
7 one? Is it five? Is it 10,000?
8 So that's, I believe, I
9 don't want to speak for Steve Mays, but I
10 believe that's the inference, is that DEA
11 has been very diligent about laying out
12 responsibilities, black-and-white,
13 through all these requirements, and then
14 this one area is -- they're not very
15 specific at all. It's very open-ended.
16 If that makes sense.
17 Q. Let's go to the next page.
18 It's got another CFR section
19 here -- well, actually, the one we were
20 just talking about, part of it.
21 Do you see that?
22 A. Yes.
23 Q. It says, The registrant
24 shall design and operate a system to

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1 disclose to the registrant suspicious
2 orders of controlled substances. The
3 registrant shall inform field diversion
4 office of the administration in his area
5 of suspicious orders when covered by the
6 registrant.
7 Do you see that?
8 A. Yes.
9 Q. Do you agree that that's a
10 regulatory responsibility that
11 AmerisourceBergen has?
12 MR. NICHOLAS: Object to the
13 form.
14 But go ahead.
15 THE WITNESS: Yes.
16 BY MR. PIFKO:
17 Q. Let's go to the next page.
18 Are we there?
19 A. Yes.
20 Q. Okay. Again, it says,
21 Regulatory responsibility. It's got
22 three bullet points.
23 The first one says,
24 Reporting suspicious orders to DEA does

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1 not relieve the distributor of the
2 responsibility to maintain effective
3 controls to prevent diversion.
4 Do you see that?
5 A. Yes.
6 Q. Do you have an understanding
7 about what that means?
8 MR. NICHOLAS: Object to the
9 form.
10 THE WITNESS: That you can't
11 just have a system that has --
12 that reports suspicious orders and
13 not have -- not have effective
14 controls in all the other areas we
15 just mentioned. It doesn't
16 relieve your responsibility to
17 maintain effective controls.
18 BY MR. PIFKO:
19 Q. Right. So just reporting a
20 suspicious order doesn't discharge your
21 responsibility under The Controlled
22 Substances Act, correct?
23 A. For recordkeeping, all those
24 other ones we kind of just went through.

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1 They are all grouped under the same
2 section, effective controls to prevent
3 diversion, 1301. All of these are in
4 1301.
5 So just doing one of 1301,
6 74, doesn't relieve you of all the other
7 items under 1301.71.
8 Q. The next bullet point says,
9 DEA cannot/will not tell a distributor if
10 an order is or is not legitimate; and/or
11 if the distributor should or should not
12 ship an order.
13 Do you see that?
14 A. Yes.
15 Q. Is that consistent with your
16 understanding of the DEA's position?
17 A. Yes. At the time of this
18 presentation, yes.
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 186

[REDACTED]

Page 188

[REDACTED]

Page 187

[REDACTED]

Page 189

[REDACTED]

about

24 completing transactions?

Page 190

[REDACTED]

Page 192

[REDACTED]

13 Q. Do you have a copy of that
14 presentation that you believe that DEA
15 made to you in your office somewhere?
16 A. We may have it somewhere,
17 yes.
18 Q. Did you make any attempts to
19 look for it?
20 MR. NICHOLAS: Objection.
21 We're making productions as we're
22 required to do in this case.
23 THE WITNESS: Is there a
24 question?

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[REDACTED]

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1 BY MR. PIFKO:
2 Q. I asked if you made any
3 attempt to look for that document?
4 A. No, I did not.
5 Q. Is that something -- you
6 said you might have that in your office
7 somewhere?
8 A. I won't have -- no, I don't
9 have that in my office. We may have it
10 on file or in storage or something. It's
11 from years ago.
12 MR. NICHOLAS: Again, just
13 in case there's any implication on
14 the record that we haven't
15 produced something we were
16 supposed to produce.
17 MR. PIFKO: Again, the
18 speaking -- I got it. There's no
19 implication. The record is what
20 it is.
21 MR. NICHOLAS: Good. That's
22 all I want to hear. There's no
23 implication. That's fantastic
24 news.

<p style="text-align: right;">Page 194</p> <p>1 Go ahead.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. Was anyone else present at</p> <p>4 this presentation that you're referring</p> <p>5 to?</p> <p>6 A. Steve Mays.</p> <p>7 Q. And who specifically from</p> <p>8 the DEA was there?</p> <p>9 A. I was not there. I</p> <p>10 believe -- I believe Mike Mapes.</p> <p>11 Q. Anyone else?</p> <p>12 A. I don't know, because I</p> <p>13 wasn't there.</p> <p>14 Q. Did you undertake any</p> <p>15 effort, in connection with preparing for</p> <p>16 this deposition, to learn about</p> <p>17 communications with the DEA that might</p> <p>18 have occurred?</p> <p>19 A. In what context?</p> <p>20 Q. Concerning The Controlled</p> <p>21 Substances Act.</p> <p>22 MR. NICHOLAS: Object to the</p> <p>23 form.</p> <p>24 THE WITNESS: I'm not</p>	<p style="text-align: right;">Page 196</p> <p>1 Steve Mays and maybe Mike Mapes from the</p> <p>2 DEA?</p> <p>3 MR. NICHOLAS: If you can</p> <p>4 answer that and it doesn't involve</p> <p>5 attorney-client communications,</p> <p>6 that's fine. If not, please don't</p> <p>7 answer.</p> <p>8 THE WITNESS: I can't</p> <p>9 answer.</p> <p>10 BY MR. PIFKO:</p> <p>11 Q. So the only conversations</p> <p>12 you may have had about this meeting</p> <p>13 were -- involved counsel?</p> <p>14 MR. NICHOLAS: I'm going to</p> <p>15 instruct him not to answer.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. You're unable to answer any</p> <p>18 questions about inquiries about this</p> <p>19 meeting based on the attorney-client</p> <p>20 privilege; is that correct?</p> <p>21 MR. NICHOLAS: I'll instruct</p> <p>22 him not to answer. I'm</p> <p>23 instructing him not to answer. He</p> <p>24 doesn't have to answer questions</p>
<p style="text-align: right;">Page 195</p> <p>1 understanding your question. I'm</p> <p>2 sorry.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. I'm just asking if you tried</p> <p>5 to learn about the company's</p> <p>6 communications with the DEA in connection</p> <p>7 with preparing for this deposition.</p> <p>8 A. Yes.</p> <p>9 Q. Did you ask anyone about</p> <p>10 that meeting that we were just talking</p> <p>11 about where Steve Mays and maybe Mike</p> <p>12 Mapes was there?</p> <p>13 A. I think --</p> <p>14 THE WITNESS: Is that a</p> <p>15 legal question?</p> <p>16 MR. NICHOLAS: To the extent</p> <p>17 this question invades the</p> <p>18 attorney-client privilege, don't</p> <p>19 answer it. I'll instruct you not</p> <p>20 to answer it.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. All I'm asking is if you</p> <p>23 asked anyone other than counsel about</p> <p>24 this meeting where -- in 2005 between</p>	<p style="text-align: right;">Page 197</p> <p>1 about this.</p> <p>2 MR. PIFKO: I'm trying to</p> <p>3 understand the privilege that's</p> <p>4 being asserted here.</p> <p>5 MR. NICHOLAS: It's the</p> <p>6 attorney-client privilege.</p> <p>7 MR. PIFKO: So the witness</p> <p>8 is being instructed not to answer</p> <p>9 any questions about efforts he</p> <p>10 undertook to learn about this</p> <p>11 meeting; is that correct?</p> <p>12 MR. NICHOLAS: No, not at</p> <p>13 all.</p> <p>14 MR. PIFKO: That's what I'm</p> <p>15 trying to understand. So I'm</p> <p>16 asking the witness --</p> <p>17 MR. NICHOLAS: If the</p> <p>18 witness undertook any efforts</p> <p>19 in -- at the direction of or, you</p> <p>20 know, in conjunction with attorney</p> <p>21 communications, then I'm only</p> <p>22 instructing him to answer in that</p> <p>23 respect.</p> <p>24 BY MR. PIFKO:</p>

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1 Q. Aside from any efforts at
2 the direction of counsel or in
3 conjunction with an attorney, did you
4 engage in any efforts to learn about this
5 DEA meeting between Steve Mays and Mike
6 Mapes in 2005?

7 A. No.

8 Q. You don't know if anyone
9 else was present besides the two of them?

10 A. I don't know.

11 Q. Let's go to the next page.

12 MR. NICHOLAS: For planning
13 purposes, purely a scheduling
14 thing, after you get through this
15 document --

16 MR. PIFKO: We'll take a
17 break.

18 MR. NICHOLAS: For lunch or
19 a short break, whatever you
20 prefer.

[REDACTED]

Page 200

[REDACTED]

Page 199

[REDACTED]

Page 201

[REDACTED]

Page 202

[REDACTED]

Page 204

[REDACTED]

Page 203

[REDACTED]

Page 205

[REDACTED]

Page 206

[REDACTED]

Page 208

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Page 207

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Page 209

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Page 210

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Page 212

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Page 211

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Page 213

[REDACTED]

Page 214

[REDACTED]

Page 216

[REDACTED]

Page 215

[REDACTED]

Page 217

[REDACTED]

Page 218

[REDACTED]

Page 220

[REDACTED]

Page 219

[REDACTED]

Page 221

[REDACTED]

Page 222

[REDACTED]

Page 224

[REDACTED]

24 MR. PIFKO: We can take a

Page 223

[REDACTED]

Page 225

1 break.

2 VIDEO TECHNICIAN: Going off

3 the record. The time is 12:30

4 p.m.

5 - - -

6 (Whereupon, a luncheon

7 recess was taken.)

8 - - -

9 VIDEO TECHNICIAN: We're

10 back on the record. The time is

11 1:19 p.m.

12 BY MR. PIFKO:

13 Q. Let's go back to Exhibit-6,

14 the stack of Dear Registrant letters.

15 Let's go two pages in to the

16 second -- or the Dear Registrant letter

17 dated December 27th, 2007.

18 Do you see that? It's on

19 Bates label ABDCMDL 00269685.

20 Are you there, sir?

21 A. Yes.

22 Q. Did AmerisourceBergen

23 receive this letter?

24 MR. NICHOLAS: Could you

<p style="text-align: right;">Page 226</p> <p>1 just ask him to take -- give him 2 just a minute to take a quick look 3 at it and make sure he's familiar 4 with the document before he 5 responds to these questions. 6 MR. PIFKO: I think we went 7 over these before. 8 MR. NICHOLAS: I think you 9 showed him the one and asked him 10 that question. He didn't look at 11 all the letters. He looked at 12 one. 13 THE WITNESS: Okay. 14 BY MR. PIFKO: 15 Q. Are you ready? It's a 16 two-page letter here. 17 A. Yes. 18 Q. Did AmerisourceBergen 19 receive this letter? 20 A. I believe so, at the 21 distribution centers. 22 Q. And that would have been on 23 or around the date of this letter, 24 December 27th, 2007?</p>	<p style="text-align: right;">Page 228</p> <p>1 CSA compliance were discussed with DEA. 2 Generally, do you recall 3 that? 4 A. We've had ongoing 5 communications with DEA since I started 6 with the company. I referenced our 7 negotiations with them in '96 to '98, 8 with the suspicious order monitoring 9 program, which resulted in an approval 10 letter. And then the negotiations, in 11 2007. 12 So we've had ongoing -- and 13 we also provided training for DEA 14 diversion investigators from '99 to 2004 15 or '05. So we've had an open dialogue 16 with DEA since I've been with the 17 company. 18 Q. Did anyone at the company 19 discuss this statement with the DEA and 20 how it impacted some of the prior 21 discussions that you may have had with 22 them? 23 MR. NICHOLAS: Object to the 24 form.</p>
<p style="text-align: right;">Page 227</p> <p>1 A. I would assume so. 2 Q. Let's go to the second 3 paragraph, last sentence -- or, sorry, 4 second-to-last sentence. 5 Accordingly, DEA does not 6 approve or otherwise endorse any specific 7 system for reporting suspicious orders. 8 Past communications with DEA, whether 9 implicit or explicit, that could be 10 construed as approval of a particular 11 system for reporting suspicious orders 12 should no longer be taken to mean that 13 DEA approves a specific system. 14 Do you see that? 15 A. Yes. 16 Q. Were you aware that that was 17 a statement that the DEA had made to 18 AmerisourceBergen at that time? 19 A. Yes. 20 Q. Did you discuss that with 21 anyone at the company? 22 A. No. 23 Q. Earlier you testified that 24 certain aspects of AmerisourceBergen's</p>	<p style="text-align: right;">Page 229</p> <p>1 THE WITNESS: No. 2 BY MR. PIFKO: 3 Q. For example, with respect to 4 the business decision that we talked 5 about in Exhibit-7 that you recalled 6 having been derived from a meeting in 7 2005, did anyone say to the DEA, as a 8 result of this December 27th, 2007 9 letter, we can no longer rely on that? 10 MR. NICHOLAS: Object to the 11 form. Only if you're asking about 12 any conversation anyone at the 13 company ever had. I don't know 14 how he can answer that. 15 But go ahead. 16 THE WITNESS: Can you 17 restate that or paraphrase the 18 question, please? 19 BY MR. PIFKO: 20 Q. Do you remember that 21 Exhibit-7 talked about the business 22 decision about whether to ship an order? 23 A. Yes. 24 Q. You remember testifying that</p>

<p style="text-align: right;">Page 230</p> <p>1 that was derived from a conversation with 2 the DEA in 2005? 3 A. It wasn't derived from a 4 conversation. It was -- it was -- you 5 had asked about the quotations of the 6 business decision, and that was a slide 7 on a DEA slide, not ABC slide. 8 Q. From a -- you said from a 9 presentation between Steve Mays and Mike 10 Mapes in 2005? 11 A. From a presentation from DEA 12 to Steve Mays. 13 Q. Did anyone, at this time, 14 reach out to the DEA and say, we can no 15 longer rely on that presentation? 16 MR. NICHOLAS: Object to the 17 form. 18 THE WITNESS: No. 19 BY MR. PIFKO: 20 Q. This letter also says, in 21 the second paragraph, Filing a monthly 22 report -- Filing a monthly report of 23 completed transactions, e.g., excessive 24 purchase report or high unit purchases,</p>	<p style="text-align: right;">Page 232</p> <p>1 agree that its responsibility continued 2 after the filing of a suspicious order 3 report? 4 MR. NICHOLAS: Object to the 5 form. 6 THE WITNESS: I mean, the 7 program we developed, which is 8 pretty much two months, three -- a 9 few months before this letter, is 10 pretty much in line with this 11 letter, in that -- in the way that 12 this is written, I'm not sure if 13 they're referring that an order 14 that hits a -- they're calling it 15 an excessive purchase, meet the 16 requirements of suspicious order, 17 is that an order of interest or a 18 suspicious order? 19 So I'm not really sure of 20 the context of their statement. 21 BY MR. PIFKO: 22 Q. Well, he's saying, 23 Responsibility does not end merely with 24 the filing of a suspicious order report.</p>
<p style="text-align: right;">Page 231</p> <p>1 does not meet the regulatory requirement 2 to report suspicious orders. Registrants 3 are reminded that their responsibility 4 does not end merely with the filing of a 5 suspicious order report. 6 Do you see that? 7 A. Are you in the -- 8 MR. NICHOLAS: Could you 9 highlight it on the screen? 10 MR. CLUFF: We're putting it 11 up now. It was actually the third 12 paragraph. 13 THE WITNESS: I didn't see 14 that. Sorry. 15 What line in the third 16 paragraph? I just want to make 17 sure, if I'm commenting on this. 18 And your question? I'm 19 sorry. 20 BY MR. PIFKO: 21 Q. You see that, first, was the 22 question? You do see it now? 23 A. Yes. 24 Q. Okay. Did AmerisourceBergen</p>	<p style="text-align: right;">Page 233</p> <p>1 So he's talking about 2 suspicious orders. 3 Do you see that? 4 A. Yes. 5 Q. So my question is, does 6 AmerisourceBergen agree that its 7 responsibility extends beyond the filing 8 of a suspicious order report? 9 MR. NICHOLAS: Object to the 10 form. 11 But go ahead. 12 THE WITNESS: I'm not really 13 sure of the context of -- once we 14 file the suspicious order report, 15 I'm not necessarily saying that 16 there's any additional 17 responsibility we have after the 18 filing of the suspicious order 19 report. 20 BY MR. PIFKO: 21 Q. So you disagree with that 22 statement, is that what I'm hearing you 23 say? 24 That's fine, whatever you're</p>

<p style="text-align: right;">Page 234</p> <p>1 saying. I just don't understand your 2 answer. 3 MR. NICHOLAS: Object to the 4 form. 5 Go ahead. 6 THE WITNESS: Yes. 7 BY MR. PIFKO: 8 Q. Yes, you disagree? 9 A. I disagree -- let me read it 10 on the page, so I can make sure that -- 11 So again, it depends on the 12 context of the sentence. Our registrants 13 are reminded that their responsibility 14 does not end merely with the filing of a 15 suspicious order. 16 That's correct. We have 17 other responsibilities to have adequate 18 controls to prevent diversion, other than 19 the filing of a suspicious order. So I'm 20 not sure if their statement is in the 21 context of filing a suspicious order and 22 the totality of the distributor's 23 responsibility. 24 Q. Well, let me ask a different</p>	<p style="text-align: right;">Page 236</p> <p>1 form. Outside the scope. 2 THE WITNESS: I don't think 3 that is in line with the 4 regulatory responsibilities of a 5 distributor, to define a program 6 to report suspicious orders. 7 BY MR. PIFKO: 8 Q. Let's go to the last 9 sentence of that paragraph. 10 It says, Reporting an order 11 as suspicious will not absolve the 12 registrant of responsibility if the 13 registrant knew or should have known that 14 controlled substances were being 15 diverted. 16 Do you see that? 17 A. I do see that. 18 Q. Do you agree with that 19 statement? 20 A. If I had more understanding 21 of what should have -- what they're 22 constituting as should have known. 23 Q. Do you believe that if 24 AmerisourceBergen knows that controlled</p>
<p style="text-align: right;">Page 235</p> <p>1 question. 2 Regardless of what this 3 letter says or doesn't say, does 4 AmerisourceBergen agree that with respect 5 to a suspicious order, its 6 responsibilities under The Controlled 7 Substances Act don't end by merely filing 8 a suspicious order report? 9 MR. NICHOLAS: Object to the 10 form. 11 THE WITNESS: I think my 12 last answer is the -- is the same 13 answer. 14 That filing a suspicious 15 order does not meet all the 16 requirements of -- to have an 17 effective controls for diversion. 18 So my answer is the same. 19 BY MR. PIFKO: 20 Q. Do you believe that 21 AmerisourceBergen is required to conduct 22 due diligence of a suspicious order even 23 after a suspicious order report is filed? 24 MR. NICHOLAS: Object to the</p>	<p style="text-align: right;">Page 237</p> <p>1 substances are being diverted, it has to 2 do more to prevent diversion beyond just 3 reporting it? 4 MR. NICHOLAS: Object to the 5 form. Could you be more specific 6 with the question? 7 THE WITNESS: It's a 8 hypothetical question, I think. 9 BY MR. PIFKO: 10 Q. You can't give an answer to 11 the question? 12 A. If we -- I think, if a 13 distributor knows that a pharmacy and -- 14 they know that they're diverting, then 15 they have responsibility to react. 16 Q. So do you agree that the 17 company has a responsibility to act? 18 A. If they have -- 19 MR. NICHOLAS: Object to the 20 form. 21 Go ahead. 22 THE WITNESS: If they know 23 there's a pharmacy that's -- that 24 they know is diverting product.</p>

<p style="text-align: right;">Page 238</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. Okay. So just, again, I'm</p> <p>3 not trying to misstate your testimony, I</p> <p>4 just want to get a clear record.</p> <p>5 So it's my understanding</p> <p>6 that what you just said is if</p> <p>7 AmerisourceBergen knows that a pharmacy</p> <p>8 is diverting product, it has a</p> <p>9 responsibility to act; is that correct?</p> <p>10 MR. NICHOLAS: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: It depends on</p> <p>13 the circumstances. You asked me a</p> <p>14 hypothetical question.</p> <p>15 So, again, and I'm not sure,</p> <p>16 again, when we put the context of</p> <p>17 diversion, what we're talking</p> <p>18 about.</p> <p>19 If a pharmacy has an</p> <p>20 employee that was arrested for</p> <p>21 diverting product, they put a</p> <p>22 bottle in their pocket, the</p> <p>23 reaction is going to be different.</p> <p>24 So it all depends upon the</p>	<p style="text-align: right;">Page 240</p> <p>1 AmerisourceBergen would know about</p> <p>2 diversion and not be obligated to act?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form. I think you're now just</p> <p>5 arguing.</p> <p>6 THE WITNESS: Again, it all</p> <p>7 depends on the circumstances of</p> <p>8 the case.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. Well, so, if it depends on</p> <p>11 the circumstances, there must be</p> <p>12 circumstances where AmerisourceBergen</p> <p>13 would know of diversion and you don't</p> <p>14 believe they would be required to act.</p> <p>15 MR. NICHOLAS: Object to the</p> <p>16 form. This isn't --</p> <p>17 MR. PIFKO: You've got to</p> <p>18 stop. You have to stop.</p> <p>19 You can object in a normal</p> <p>20 objection way, you can say form.</p> <p>21 You can say foundation. You can</p> <p>22 state a legal objection.</p> <p>23 But you are coaching the</p> <p>24 witness. You have done</p>
<p style="text-align: right;">Page 239</p> <p>1 totality of the circumstance.</p> <p>2 I can't give you a general</p> <p>3 answer that if there's a pharmacy</p> <p>4 that's diverting, depending upon</p> <p>5 what that type of diversion is,</p> <p>6 what that action will be.</p> <p>7 BY MR. PIFKO:</p> <p>8 Q. But you agree that some</p> <p>9 action may be -- it depends on the nature</p> <p>10 of the diversion -- the action would</p> <p>11 depend on the nature of the diversion,</p> <p>12 but some action would be required?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form.</p> <p>15 THE WITNESS: It depends on</p> <p>16 the circumstances. And, again,</p> <p>17 it's a case-by-case basis,</p> <p>18 depending upon the totality of the</p> <p>19 circumstances, of what the</p> <p>20 reaction would be. There isn't a</p> <p>21 must.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. So is it your testimony that</p> <p>24 there are circumstances where</p>	<p style="text-align: right;">Page 241</p> <p>1 textbook -- there is case law</p> <p>2 addressing exactly what you're</p> <p>3 doing in this district, and you</p> <p>4 need to stop, okay?</p> <p>5 MR. NICHOLAS: Listen. Now</p> <p>6 you're going to let me speak for a</p> <p>7 minute.</p> <p>8 MR. PIFKO: No, I'm not.</p> <p>9 You need to stop this right now.</p> <p>10 MR. NICHOLAS: I read the</p> <p>11 transcript of your defense of the</p> <p>12 Merrill Gordon.</p> <p>13 MR. PIFKO: We're not</p> <p>14 talking about anything right now.</p> <p>15 And all I did -- and all I did was</p> <p>16 state my objections with clarity</p> <p>17 and specificity. And I did not</p> <p>18 coach the witness at one moment of</p> <p>19 the deposition.</p> <p>20 You are telling -- you said</p> <p>21 things like "if you know." You</p> <p>22 said that before the last break.</p> <p>23 MR. NICHOLAS: Is that so</p> <p>24 horrible?</p>

<p style="text-align: right;">Page 242</p> <p>1 MR. PIFKO: Because there's 2 case law prohibiting that kind of 3 conduct. That is directing the 4 witness. If you know, that's 5 directing the witness to say I 6 don't know. 7 You cannot do that. Just 8 stop. 9 MR. NICHOLAS: 10 Unfortunately -- 11 MR. PIFKO: Am I going to 12 get your agreement that you're 13 going to comply with the law? 14 MR. NICHOLAS: I've been 15 complying with the law the entire 16 time. 17 I read your deposition. 18 MR. PIFKO: You've been 19 coaching the witness. 20 MR. NICHOLAS: I have not. 21 MR. PIFKO: You have. 22 MR. NICHOLAS: I read your 23 transcript of the Merrill 24 Gordon --</p>	<p style="text-align: right;">Page 244</p> <p>1 AmerisourceBergen is aware of diversion, 2 do you believe that beyond reporting it 3 to the DEA, the company has a 4 responsibility to take some action? 5 A. It depends on the 6 circumstances. We had an investigation, 7 we were working with DEA, and they had 8 diversion at a pharmacy and we were told 9 to continue servicing them during the 10 course of the investigation. 11 There's an instance where we 12 knew of diversion and we didn't take any 13 action because we were working with the 14 DEA. 15 Every instance is different. 16 You're asking me to give you a blanket 17 response to situational instances. And I 18 can't. There's -- no two are alike. And 19 I can't give you a single answer to your 20 response, because it depends. 21 It depends. If DEA wants us 22 to continue servicing them and there's a 23 diversion, then we would have no action. 24 Q. What pharmacy are you</p>
<p style="text-align: right;">Page 243</p> <p>1 MR. PIFKO: I never once 2 said facts -- 3 MR. NICHOLAS: I never saw 4 anything like it. 5 MR. PIFKO: -- in my 6 objections. 7 MR. NICHOLAS: It was an 8 incredible thing. I'm like Mother 9 Teresa compared to you in that 10 deposition. 11 MR. PIFKO: I disagree. 12 MR. NICHOLAS: I'm sure you 13 do disagree. 14 MR. PIFKO: We're moving on. 15 You need to stop, okay? 16 MR. NICHOLAS: I will 17 continue to do exactly what I 18 think is appropriate in this 19 deposition, as needed. 20 BY MR. PIFKO: 21 Q. I'm trying to get an answer 22 from you, and I'm just trying to 23 understand what your testimony is, okay? 24 So I've asked you if</p>	<p style="text-align: right;">Page 245</p> <p>1 referring to where there was diversion 2 and the DEA told you to continue 3 servicing them? 4 MR. NICHOLAS: I'm going to 5 caution the witness that if 6 there's -- for any reason, this is 7 an ongoing investigation and 8 confidential -- 9 MR. PIFKO: He raised the 10 issue. 11 MR. NICHOLAS: I don't care. 12 If it's confidential and he's not 13 supposed to disclose the name of 14 it for legal reasons, then he 15 shouldn't do it. 16 THE WITNESS: And it's some 17 time ago and outside the scope. 18 MR. PIFKO: You're not 19 allowed to object to outside the 20 scope, sir. 21 MR. NICHOLAS: Well, he's 22 not objecting. 23 MR. PIFKO: He just said 24 it's outside the scope.</p>

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1 MR. NICHOLAS: I don't know
2 that --
3 MR. PIFKO: You're a fact
4 witness here as well as a 30(b)(6)
5 witness. You need to answer my
6 questions.
7 THE WITNESS: I don't know
8 the name of the pharmacy, but we
9 received recognition from the DEA
10 for participation in the
11 investigation.
12 BY MR. PIFKO:
13 Q. When was that?
14 A. It was 2002 or 2004, I can't
15 remember the time frame.
16 But after the course of the
17 investigation, the prosecution, we
18 received a certificate of recognition
19 from the DEA. That's the case I'm
20 referring to.
21 Q. So it was a concluded
22 investigation, correct?
23 A. Yes.
24 Q. Okay. Where was this

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1 pharmacy? What state?
2 A. It was in New Jersey.
3 Q. Okay. What type of pharmacy
4 was it?
5 A. I don't -- I mean, you're
6 talking about something that happened 16
7 years ago. I know we received a
8 recognition for participation in the
9 investigation. And, you know, I don't
10 know the name of the pharmacy. I don't
11 know the --
12 Q. Can you recall any other
13 pharmacies where the DEA told you to
14 continue shipping to them despite knowing
15 about diversion?
16 A. I don't.
17 Q. So that's only happened, to
18 your knowledge, on one occasion?
19 MR. NICHOLAS: Object to the
20 form.
21 THE WITNESS: That I'm aware
22 of right now. And I'm not saying
23 that that hasn't occurred within
24 my department and with other

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1 individuals.
2 You're asking me as a -- as
3 a -- this gets to the part of am I
4 a 3 -- what is it?
5 MR. NICHOLAS: 30(b)(6).
6 THE WITNESS: 30(b)(6) or me
7 personally.
8 BY MR. PIFKO:
9 Q. Do you know if that pharmacy
10 in New Jersey was put on the do not ship
11 list?
12 MR. NICHOLAS: Object to the
13 form. Outside the scope.
14 THE WITNESS: I don't know.
15 I don't know.
16 BY MR. PIFKO:
17 Q. I'm handing you what is
18 marked as Exhibit-8.
19 - - -
20 (Whereupon, Amerisource
21 Bergen-Zimmerman Exhibit-8,
22 ABDCMDL 00270533, was marked for
23 identification.)
24 - - -

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1 MR. PIFKO: For the record,
2 it's a single-page document Bates
3 labeled ABDCMDL 00270533. It's
4 dated Monday, August 7th, 2017.
5 BY MR. PIFKO:
6 Q. And I will represent to you
7 that the metadata that accompanied this
8 document says that it came from your
9 files, Mr. Zimmerman.
10 So please take a moment to
11 review it and let me know when you're
12 done.
13 A. Yes.
14 Q. Are you done?
15 A. I am.
16 Q. Okay. Do you recognize this
17 document?
18 A. I don't -- I guess it's a
19 document.
20 Q. Do you recall writing this?
21 A. It was notes, yes.
22 Q. What was it notes for?
23 A. I think I was -- for -- I
24 was probably meeting with somebody, so I

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1 was just jotting down some points.
2 Q. BOD, is that board of
3 directors?
4 A. Board of -- where?
5 Q. It's on the subject line.
6 A. I think it was supposed to
7 be -- I'm not sure. I don't know if it
8 should have been BOP or BOD. Board of
9 Pharmacy. I'm not sure. I can't
10 remember.
11 Q. What would CS mean?
12 Controlled substances?
13 A. I don't recall.
14 Q. TPs, does that mean anything
15 to you?
16 A. I'm guessing -- if I had to
17 guess, I would say talking points.
18 Q. So it could be board of
19 directors, controlled substances, talking
20 points?
21 MR. NICHOLAS: Object to the
22 form.
23 THE WITNESS: I'm not sure.
24 - - -

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[REDACTED]

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1 (Whereupon, Amerisource
2 Bergen-Zimmerman Exhibit-9,
3 ABDCMDL 00273425, was marked for
4 identification.)
5 - - -
6 BY MR. PIFKO:
[REDACTED]

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[REDACTED]

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[REDACTED]

Page 256

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Page 257

[REDACTED]

Page 258

[REDACTED]

Page 260

[REDACTED]

Page 259

[REDACTED]

Page 261

[REDACTED]

3 BY MR. PIFKO:

4 Q. Do you believe that

5 AmerisourceBergen has any duties to

6 prevent diversion outside of the

7 regulations under The Controlled

8 Substances Act?

9 MR. NICHOLAS: Object to the

10 form. Not within the scope of

11 the -- I don't know if you're

12 asking him as an individual or

13 under the 30(b)(6) thing, but it's

14 not covered by 30(b)(6) topics.

15 I'll object to it.

16 THE WITNESS: I think we

17 have a responsibility to comply

18 with the federal regulations and

19 state Board of Pharmacy

20 regulations as it respects to the

21 handling, storage and distribution

22 of controlled substances.

23 BY MR. PIFKO:

24 Q. But do you believe that

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1 there's any other requirements to prevent
2 diversion outside of The Controlled
3 Substances Act or State Pharmacy Board
4 rules?
5 MR. NICHOLAS: Object to the
6 form. Same objection I just
7 stated.
8 THE WITNESS: I'm not aware
9 of any other requirements.
10 BY MR. PIFKO:
11 Q. Does AmerisourceBergen
12 undertake any actions to prevent
13 diversion for reasons beyond what is
14 required in The Controlled Substances
15 Act?
16 MR. NICHOLAS: Object to the
17 form. Outside the scope. And I
18 don't understand the question.
19 And I don't know if the witness
20 does.
21 THE WITNESS: Can you state
22 that one more time, please?
23 BY MR. PIFKO:
[REDACTED]

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[REDACTED]

Page 264

[REDACTED]

Page 265

[REDACTED]

Page 266

[REDACTED]

Page 268

[REDACTED]

Page 267

[REDACTED]

Page 269

[REDACTED]

7 Q. You're aware that there's an
8 opioid crisis in America, correct?
9 A. Yes.
10 Q. Did AmerisourceBergen ever,
11 at any point, think to itself, could we
12 do more to prevent diversion as a result
13 of the opioid crisis?
14 MR. NICHOLAS: Object to the
15 form. It's outside the scope as
16 well.
17 THE WITNESS: And I'm not
18 sure I understand the time frame
19 you're talking about.
20 We always want to make sure
21 that we're following the
22 appropriate policy and procedures
23 and working with DEA on these
24 issues, you know, whether it's

<p style="text-align: right;">Page 270</p> <p>1 methamphetamine abuse or any other 2 area. 3 And in the past, we had a 4 great working relationship with 5 the DEA to resolve these issues. 6 When it was methamphetamine, they 7 passed a bill, enacted regulations 8 and requirements, as we talked 9 about, with the handling. 10 But in the opioid crisis, 11 there's no implementation of 12 bills, there was no -- there was 13 no input from DEA like they had in 14 past crises, for the opioid 15 crisis. 16 We worked with DEA in 2007. 17 We felt we built a program that 18 was, again, I think, 19 state-of-the-art in the industry. 20 And that was the program we 21 implemented. 22 We shared our program with 23 all the other industry 24 memberships. It wasn't -- we were</p>	<p style="text-align: right;">Page 272</p> <p>1 do that to enhance our program, we 2 do. It's not -- it's not static. 3 We don't just implement it in 2007 4 and there's just no changes. It's 5 a constant. 6 BY MR. PIFKO: 7 Q. Right. But I'm asking if 8 you had a specific discussion about 9 changing or adding to the program as a 10 result of issues stemming from the opioid 11 crisis? 12 MR. NICHOLAS: Object to the 13 form. You're arguing. 14 THE WITNESS: I don't know 15 if there was a specific meeting 16 titled exactly how you're stating 17 it. No, I don't know. 18 BY MR. PIFKO: 19 Q. Okay. I told you I would 20 ask you the question a different way. 21 Now as an individual -- or 22 as the chief compliance officer and the 23 head of the CSRA, are you aware of any 24 conversations, at any time when you</p>
<p style="text-align: right;">Page 271</p> <p>1 open about our process. And, you 2 know, I think that, on itself, 3 shows the efforts of 4 AmerisourceBergen. 5 BY MR. PIFKO: 6 Q. I'm going to ask this 7 question two different ways. 8 First, from -- for the 9 30(b)(6) period of the deposition, the 10 time period, are you aware of any 11 meetings where the company discussed the 12 opioid crisis and what steps it could 13 take to improve its diversion control 14 measures to address those issues? 15 MR. NICHOLAS: Object to the 16 form. 17 THE WITNESS: We 18 regularly -- the department 19 regularly meets and discusses our 20 programs and processes and what we 21 do at the distribution centers, 22 but also with this program as 23 well. And it's open dialogue. 24 And if there's areas we can</p>	<p style="text-align: right;">Page 273</p> <p>1 worked at the company, where there was 2 discussion of improving diversion control 3 measures specifically in response to the 4 opioid crisis? 5 MR. NICHOLAS: Object to the 6 form. 7 THE WITNESS: As I 8 previously stated, there is always 9 discussions about our program and 10 our processes, not just with the 11 suspicious order monitoring but 12 how we handled things across the 13 scope of the distribution center 14 and all of our requirements. 15 So you're asking me, did 16 have -- can I point to one 17 specific meeting? Not that I'm 18 aware of. But it was a topic that 19 we generally discussed. 20 VIDEO TECHNICIAN: Going off 21 the record. 2:01 p.m. 22 - - - 23 (Whereupon, a brief recess 24 was taken.)</p>

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Page 284

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Page 285

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<p>Page 286</p> <p>[REDACTED]</p>	<p>Page 288</p> <p>[REDACTED]</p>
<p>287</p> <p>[REDACTED]</p>	<p>Page 289</p> <p>[REDACTED]</p>

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23 [REDACTED]
24 [REDACTED]

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1 (Whereupon, Amerisource
2 Bergen-Zimmerman Exhibit-11,
3 CAH_MDL_PRIORPROD_DEA_07_00880890-
4 92, was marked for
5 identification.)
6 - - -
7 BY MR. PIFKO:
8 Q. I'm handing you what is
9 marked as Exhibit-11.
10 It's a document produced by
11 Cardinal Health in this matter, which we,
12 under the protective order, obtained
13 prior approval to use it in this
14 deposition. It's Bates labeled
15 CAH_MDL_PRIORPROD_DEA07_00880890 to 92.
16 It's an e-mail at the top
17 from Steve Reardon, dated September 11,
18 2007, to Mr. Zimmerman. The subject is,
19 Summary of September 7th meeting with DEA
20 and attachments.
21 Let me know when you're done
22 reviewing it.
23 A. Okay.
24 Q. Do you recall receiving this

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1 e-mail?
2 A. I don't.
3 Q. Do you have any reason to
4 believe this is not a true and correct
5 copy of an e-mail that you received?
6 A. No, I don't doubt that.
7 Q. We did talk about the HDMA a
8 little bit earlier.
9 Did you serve -- did you
10 serve, in any capacity, on any committee
11 or board or group within the HDMA?
12 A. At some point, I was on the
13 regulatory affairs committee. And now
14 I'm on the public -- I think they call it
15 the public policy committee.
16 Q. Do you believe that you were
17 on the regulatory affairs committee at
18 around the time this e-mail was sent in
19 September of 2007?
20 A. Could have been, yes.
21 Q. Do you recall what your
22 responsibilities were as a member of the
23 regulatory affairs committee?
24 A. As a member, I mean, we

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1 would talk about regulatory issues facing
2 wholesalers.
3 Q. Regulatory issues concerning
4 The Controlled Substances Act; is that
5 correct?
6 A. It could be a whole host of
7 things. It could be destruction. It
8 wasn't only for controlled substances.
9 Anything involving wholesale distribution
10 in the healthcare chain.
11 Q. But that could include
12 controlled substances?
13 A. Yes.
14 Q. Okay. How about diversion
15 control, would that include that?
16 A. Yes.
17 Q. Do you recall HDMA setting
18 up a meeting with members of the DEA
19 around this time in 2007?
20 A. I don't.
21 Q. This is around the time of
22 some of the Dear Registrant letters.
23 Do you agree?
24 A. Yes. Yes.

<p style="text-align: right;">Page 306</p> <p>1 Q. Do you recall there being 2 more activity between members of the 3 industry and DEA at that time? 4 A. As I previously stated, I 5 mean, when I started, we met with DEA 6 every six months and it was a regular 7 activity. And then with the training 8 program, we met with them a lot more; 9 there was a lot more communication. 10 In 2007, this came shortly 11 after -- this is probably within weeks 12 after we got our distribution center back 13 and implemented our new program. So 14 there was a lot of activity on this 15 subject matter. 16 Q. Do you know why the HDMA 17 would have been having a meeting with the 18 DEA at this time? 19 MR. NICHOLAS: Object to the 20 form. 21 THE WITNESS: As I 22 indicated, at that time, they 23 would meet regularly with them; if 24 not every six months, every year.</p>	<p style="text-align: right;">Page 308</p> <p>1 one in years. People on my staff attend 2 them. 3 Q. When do you recall having 4 last attended one? 5 A. It may have been 2009. I am 6 not sure if I attended one in 2011. But 7 I know I haven't attended one for the 8 last, you know, years. 9 Q. You've always -- someone 10 from Amerisource has always been sent to 11 one of these conferences? 12 A. Usually, yes. 13 Q. And do they continue to this 14 day? 15 A. Yes. 16 Q. Do you know if there was one 17 in 2016? 18 A. I don't know if it's 2016 or 19 2017, but they have them every two years. 20 Q. Okay. Does anyone take 21 notes at these meetings? 22 A. I don't know if HDA as -- 23 does that or not. I don't know. 24 Q. Do you direct any of your</p>
<p style="text-align: right;">Page 307</p> <p>1 I don't know if this is a regular 2 meeting that they have to discuss 3 issues with distributors or 4 distributors wanting 5 clarification. 6 I'm not really sure what the 7 nexus of this meeting was about. 8 BY MR. PIFKO: 9 Q. Did you ever attend DEA 10 conferences? 11 A. Yes. 12 Q. How often does the DEA put 13 on conferences? 14 A. I believe every other year 15 for distributors, and then the other 16 years pharmacy practitioners. I'm not 17 positive about that. 18 But I know our meetings 19 are -- usually every two years, DEA will 20 have an industry meeting for 21 distributors. 22 Q. Do you always attend those? 23 A. I attended a lot of them 24 earlier on. I probably haven't attended</p>	<p style="text-align: right;">Page 309</p> <p>1 staff members to take notes of the 2 meetings if you don't attend? 3 A. They would -- I would assume 4 they would take notes. DEA usually 5 provides the slides that they produce at 6 the industry conferences. I'm not sure 7 if they put them on their website -- I'm 8 not sure if they put them on their 9 website or not. 10 Q. Do you discuss the 11 presentations or the conferences with 12 other members of the HDMA? 13 A. Do we discuss the DEA 14 conferences with HDMA members? Most of 15 them are usually there. I shouldn't say 16 all of them, but a lot of the members are 17 there at the DEA conference. 18 Q. So you meet with each other 19 while you're at these conferences? 20 You're there together? 21 A. Yes. 22 Q. Do you discuss diversion 23 control while you're at these 24 conferences?</p>

<p style="text-align: right;">Page 310</p> <p>1 MR. NICHOLAS: I'm going to 2 just object to the questions, only 3 to the extent that the witness 4 said he hasn't been to one of 5 these conferences himself since 6 2009 or maybe 2011. 7 So I want to make sure the 8 record is clear that we're, you 9 know -- he's not talking about -- 10 he can only talk about what he can 11 talk about. 12 Go ahead. 13 THE WITNESS: Years back, 14 yeah, we would talk about 15 regulatory issues or how we do 16 things or, you know, what -- those 17 type of things. 18 BY MR. PIFKO: 19 Q. Is there a meeting through 20 the HDMA, after these conferences, where 21 the members get together and discuss what 22 was said at the conference and their 23 views on the information that the DEA 24 might have shared at the conference?</p>	<p style="text-align: right;">Page 312</p> <p>1 Q. Do you know if he still 2 works at Cardinal Health? 3 A. He does not. 4 Q. Does he work for another 5 distributor, do you know? 6 A. He's retired. 7 Q. How about Anita Ducca, do 8 you know who that is? 9 A. I believe -- yes, I do. 10 Q. Who is she? 11 A. I believe she's vice 12 president of regulatory affairs for HDMA. 13 Q. So then Brian sends this to 14 Steve Reardon, and says, Steve, pasted 15 below please find the summary of HDMA's 16 meeting with the DEA last Friday. Please 17 let me know if you need anything else. 18 Do you see that? 19 A. Yes. 20 Q. And then it's got a summary 21 of the meeting here. 22 It says, Key takeaways from 23 the meeting were -- do you see where that 24 is?</p>
<p style="text-align: right;">Page 311</p> <p>1 MR. NICHOLAS: Same 2 objection for the same reason. 3 THE WITNESS: My 4 recollection was that, you know, 5 there would be discussions prior 6 to the meetings if there's 7 questions that we wanted to bring 8 up, as an industry. 9 I don't recall if there was 10 a structured debrief or anything 11 like that after. 12 BY MR. PIFKO: 13 Q. Let's look back at 14 Exhibit-11. 15 It says here -- well, first, 16 do you know who Brian Cherico is? 17 A. I'm not familiar with Brian. 18 Q. How about Steve Reardon? 19 A. Yes. 20 Q. Who is Steve Reardon? 21 A. He was -- I don't know if 22 he's director or senior director or vice 23 president of regulatory. I've known him 24 for quite some time.</p>	<p style="text-align: right;">Page 313</p> <p>1 A. Yes. 2 Q. DEA's policy was to expect 3 more than just reporting suspicious 4 orders. If there was a suspicious order, 5 the distributor should either stop the 6 delivery or should evaluate the customer 7 further before delivering it. 8 Do you see that? 9 A. Yes. 10 Q. Did you have an 11 understanding, at that time, that that 12 was DEA's position? 13 A. Yes. This was the program 14 that we had just negotiated. 15 Q. It says, Simply complying 16 with the suspicious orders regulatory 17 requirement does not mean, in the 18 agency's view, that the registrant is 19 maintaining an effective program to 20 detect and prevent diversion. 21 Do you see that? 22 A. Yes. 23 Q. Did you have an 24 understanding that that was the DEA's</p>

<p style="text-align: right;">Page 314</p> <p>1 position at the time?</p> <p>2 A. As I previously indicated,</p> <p>3 there's many requirements to have</p> <p>4 adequate controls to prevent diversion,</p> <p>5 other than just to report a suspicious</p> <p>6 order, yes.</p> <p>7 Q. It then says, DEA indicated</p> <p>8 that they did not have the resources to</p> <p>9 inspect every pharmacy; therefore, it was</p> <p>10 important for the distributor to, quote,</p> <p>11 know their customers, end quote.</p> <p>12 Do you see that?</p> <p>13 A. I see that.</p> <p>14 Q. Did you have an</p> <p>15 understanding that that was the DEA's</p> <p>16 position at the time?</p> <p>17 A. I've never seen it stated as</p> <p>18 such, that a lack of resources by DEA</p> <p>19 imposes a requirement upon a registrant</p> <p>20 over and above their regulatory</p> <p>21 responsibilities.</p> <p>22 Q. Well, they sent this e-mail</p> <p>23 to you saying this in 2007.</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 316</p> <p>1 Q. Upon receiving this e-mail,</p> <p>2 did AmerisourceBergen take any steps to</p> <p>3 respond to the idea that DEA did not have</p> <p>4 adequate resources to inspect pharmacies</p> <p>5 and, therefore, it was important for them</p> <p>6 to, quote, know their customer?</p> <p>7 MR. NICHOLAS: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: No. This</p> <p>10 is -- like I indicated previously,</p> <p>11 this is maybe a couple of weeks</p> <p>12 after we negotiated our program</p> <p>13 which contained the "know your</p> <p>14 customer." So there's no use to</p> <p>15 respond to this. This is our</p> <p>16 program.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. Let's go to the next page.</p> <p>19 It says, DEA provided</p> <p>20 examples of what a wholesale distributor</p> <p>21 should do to, quote, know their</p> <p>22 customers, end quote, and what to look</p> <p>23 for.</p> <p>24 Do you see that?</p>
<p style="text-align: right;">Page 315</p> <p>1 Q. Do you recall discussing</p> <p>2 that with anyone?</p> <p>3 A. No.</p> <p>4 Q. Do you recall being shocked</p> <p>5 that that was a new position of the DEA</p> <p>6 of which you weren't familiar with?</p> <p>7 A. No.</p> <p>8 Q. Okay. So that's consistent</p> <p>9 with the DEA's position as far as you</p> <p>10 knew at the time?</p> <p>11 MR. NICHOLAS: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: You had stated</p> <p>14 that -- in our negotiation, they</p> <p>15 wanted us to enhance our due</p> <p>16 diligence process. What I don't</p> <p>17 recall them saying is that we</p> <p>18 can't -- we don't have resources</p> <p>19 to do this, so we want you to do</p> <p>20 that. I don't recall that.</p> <p>21 I recall them wanting us to</p> <p>22 enhance our due diligence process,</p> <p>23 yes.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 317</p> <p>1 A. Yes. I see that, yes.</p> <p>2 Q. Do you recall getting</p> <p>3 guidance from the DEA on what you should</p> <p>4 do to know your customers?</p> <p>5 MR. NICHOLAS: Object to the</p> <p>6 form. It seems like you'd want to</p> <p>7 call his attention to the</p> <p>8 additional sentences in the</p> <p>9 paragraph to help answer the</p> <p>10 question.</p> <p>11 THE WITNESS: As I</p> <p>12 indicated, we had had these</p> <p>13 discussions with the DEA in</p> <p>14 developing our program and the</p> <p>15 discussions about the form, yes.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. Did you understand that the</p> <p>18 DEA wanted you to inspect pharmacies?</p> <p>19 A. Part of our due diligence</p> <p>20 program was to have a site visit and</p> <p>21 complete a form, yes.</p> <p>22 Q. This is what -- the new</p> <p>23 customer onboarding you talked about?</p> <p>24 A. Correct.</p>

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1 Q. Did you have an
2 understanding that you should inspect
3 customers who are existing customers?
4 A. No.
5 Q. It says, They -- referring
6 to the DEA -- also mentioned such actions
7 as, quote, doing Google searches, end
8 quote, to determine if the pharmacy's
9 name was affiliated with an Internet site
10 and getting information from the state as
11 to the nature and number of prior legal
12 actions against a pharmacy.
13 Do you see that?
14 A. Yes.

[REDACTED]

Page 319

[REDACTED]

Page 320

[REDACTED]

Page 321

[REDACTED]

Page 322

6 BY MR. PIFKO:

7 Q. It says, towards the bottom,
8 second-to-last bullet point, DEA also
9 indicated that they were not going to
10 make a decision for the wholesale
11 distributor as to when an order was
12 suspicious. They feel this is up to the
13 distributor.

14 Do you see that?

15 A. Yes.

16 Q. Did you understand that the
17 determination of whether an order was
18 suspicious was up to you?

19 A. Yes.

20 Q. The last bullet point says,
21 DEA suggested that distributors should
22 check on the pharmacy's prescribing
23 physicians. They pointed to some states
24 having online systems by which a

Page 323

1 distributor could check to see if a
2 prescribing physician had a valid DEA
3 registration. DEA suggested that
4 distributors ask who the doctors are that
5 are prescribing, where the pharmacy is
6 geographically with respect to its
7 prescribing doctors, and the patient
8 population.

9 Do you see that?

10 A. Yes.

Page 324

Page 325

Page 326

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 Q. Do you recall taking any
20 action, as a result of receiving this
21 e-mail describing the DEA's position on
22 the issues we just discussed?
23 MR. NICHOLAS: Object to the
24 form.

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1 THE WITNESS: I'm not sure
2 what action -- I don't recall
3 getting the e-mail, so I don't
4 recall reading the e-mail and then
5 any action.
6 This is two weeks after we
7 put our program in place, which is
8 pretty much the points that
9 they're hitting on.
10 And I think this is in
11 September. And I spoke at their
12 conference, I think it was
13 November, and covered pretty much
14 these same points. So our program
15 was already meeting these
16 requirements.
17 MR. NICHOLAS: Mark before
18 you go to another document, it's
19 been two hours. Can we take a
20 break?
21 MR. PIFKO: Sure.
22 VIDEO TECHNICIAN: Going off
23 the record. 3:05 p.m.
24 - - -

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1 (Whereupon, a brief recess
2 was taken.)
3 - - -
4 VIDEO TECHNICIAN: We're
5 back on record at 3:26 p.m.
6 - - -
7 (Whereupon, a discussion off
8 the record occurred.)
9 - - -
10 (Whereupon, Amerisource
11 Bergen-Zimmerman Exhibit-12,
12 MNKT1_0000291614-1620, was marked
13 for identification.)
14 - - -
15 BY MR. PIFKO:
16 Q. I've just handed you what's
17 marked as Exhibit-12. It's a document
18 Bates labeled MNKT1_0000291614 through --
19 MR. CLUFF: This is another
20 one --
21 BY MR. PIFKO:
22 Q. -- 1620.
23 MR. CLUFF: -- where we
24 obtained permission from

Page 329

1 Mallinckrodt's counsel prior to
2 its use today.
3 MR. NICHOLAS: Okay.
4 BY MR. PIFKO:
5 Q. Could you take a minute to
6 take a look at this document, please?
7 A. Yes.
8 Q. Let me know when you're
9 done.
10 I was only going to ask you
11 about a couple of things on here, in the
12 interest of time. Feel free to look at
13 it, but I can direct you to the couple of
14 questions.
15 Have you seen this document
16 before?
17 A. I don't recall seeing it
18 before.
19 Q. It says, HDMA, DMC expo,
20 2011.
21 Do you know what an HDMA,
22 DMC expo is?
23 A. HDMA has an annual
24 management conference, I'm assuming

<p style="text-align: right;">Page 330</p> <p>1 that's what they're referring to.</p> <p>2 Q. When you were on -- you've</p> <p>3 been -- you've had a role with respect to</p> <p>4 the HDMA for a long time now, right?</p> <p>5 You've had different roles.</p> <p>6 I think -- I forget, but you</p> <p>7 were on one committee and then you're on</p> <p>8 some other committee now, right?</p> <p>9 A. That's correct.</p> <p>10 Q. So you've always had an</p> <p>11 affiliation with the HDMA?</p> <p>12 A. Yes.</p> <p>13 Q. Have you attended this</p> <p>14 conference in the past?</p> <p>15 A. I have.</p> <p>16 Q. Do you believe you attended</p> <p>17 this one?</p> <p>18 A. I may have. It's like with</p> <p>19 the other one, I don't -- I haven't</p> <p>20 attended them the last -- for years. I</p> <p>21 just don't know when -- when I stopped</p> <p>22 attending.</p> <p>23 Q. You see at the top here, it</p> <p>24 says, Attendees included</p>	<p style="text-align: right;">Page 332</p> <p>1 interacted with before?</p> <p>2 A. I have.</p> <p>3 Q. It says she's chief policy</p> <p>4 and liaison, Drug Enforcement</p> <p>5 Administration.</p> <p>6 A. Correct.</p> <p>7 Q. What did she do, as far as</p> <p>8 your interactions with her?</p> <p>9 A. She would be one, if we had</p> <p>10 a policy question or a process question,</p> <p>11 that we would either write to her or call</p> <p>12 her.</p> <p>13 Q. It says here, Cathy gave a</p> <p>14 brief overview of hot topics current</p> <p>15 within the DEA.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. In conferences -- in HDMA</p> <p>19 conferences you do remember attending, do</p> <p>20 you remember the DEA presenting current</p> <p>21 topics of interest to the members of the</p> <p>22 industry at these conferences?</p> <p>23 A. Yes. There was usually a</p> <p>24 segment that DEA presented at.</p>
<p style="text-align: right;">Page 331</p> <p>1 AmerisourceBergen, Cardinal, H.D. Smith,</p> <p>2 McKesson, Lilly, Johnson & Johnson,</p> <p>3 Purdue, Sanofi, Aventis, AmeriCares and</p> <p>4 many more.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. So you believe you would</p> <p>8 always send someone to these conferences</p> <p>9 if you didn't attend yourself?</p> <p>10 A. Yes.</p> <p>11 Q. I just want to know, I want</p> <p>12 to ask you about your familiarity with</p> <p>13 some of the topics that were discussed</p> <p>14 here.</p> <p>15 This is -- the notes here</p> <p>16 are about a specific DEA session that</p> <p>17 occurred on March 7th at this conference.</p> <p>18 Do you see that just on the</p> <p>19 first page at the top?</p> <p>20 A. Yes. ^^</p> <p>21 Q. Do you know who Cathy</p> <p>22 Gallagher is?</p> <p>23 A. I do.</p> <p>24 Q. Is that someone you've</p>	<p style="text-align: right;">Page 333</p> <p>1 Q. One of these, if you scroll</p> <p>2 way down to the bottom,</p> <p>3 second-to-the-last bullet point, Increase</p> <p>4 of ER visits are 97 percent contributable</p> <p>5 to pharmaceuticals; opioids are the most</p> <p>6 frequent.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall that being a</p> <p>10 topic of discussion within the industry</p> <p>11 in 2011?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. Do you recall discussing</p> <p>17 that with anyone at the HDMA at any</p> <p>18 point?</p> <p>19 A. I don't recall discussions</p> <p>20 regarding emergency room visits, no.</p> <p>21 Q. Do you have any reason to</p> <p>22 dispute this fact?</p> <p>23 MR. NICHOLAS: Object to the</p> <p>24 form.</p>

<p style="text-align: right;">Page 334</p> <p>1 THE WITNESS: I'm assuming 2 that these are bullet points based 3 upon DEA slides. So, I mean, this 4 is what DEA presented. 5 BY MR. PIFKO: 6 Q. Let's turn to the next page. 7 Look at the heading, Rogue 8 Pain Clinics in Florida. 9 Do you see that? 10 A. Yes. 11 Q. It talks about Operation 12 Pill Nation, it looks like some sort of 13 enforcement initiative. 14 And then it says, Problem 15 now is migration, in quotes, vast 16 majority of patients are visiting Florida 17 from out of state. 18 It mentions various states, 19 including Ohio. 20 Do you see that? 21 A. Yes. 22 Q. Do you recall ever 23 discussing the topic of migration amongst 24 members of the industry or with HDA?</p>	<p style="text-align: right;">Page 336</p> <p>1 attorney-client privilege. 2 Otherwise, you can answer. 3 THE WITNESS: No. 4 BY MR. PIFKO: 5 Q. Aside from communications 6 with the HDMA and this conference, are 7 you familiar with the idea of migration? 8 MR. NICHOLAS: Objection. 9 Outside the scope of the 30(b)(6). 10 THE WITNESS: I'm not -- in 11 what context? 12 BY MR. PIFKO: 13 Q. Well, okay, you're the top 14 dog with respect to the CSRA and 15 compliance at the company. 16 And I just want to know, in 17 serving in that role at the company, if 18 this idea of out-of-state people going to 19 different states to buy pills and 20 migrating them back to their hometown, if 21 that's something that you are familiar 22 with? 23 A. I've seen articles that 24 reference that.</p>
<p style="text-align: right;">Page 335</p> <p>1 MR. NICHOLAS: Objection. 2 Not to the form, but to the fact 3 that I think this is completely 4 outside the scope of the 30(b)(6), 5 unless you can tell me -- 6 MR. PIFKO: He's the had 7 representative. I believe you 8 designated him for that topic. 9 THE WITNESS: I don't 10 recall. 11 BY MR. PIFKO: 12 Q. Did you undertake any 13 activities, in preparing for this 14 deposition, to familiarize yourself with 15 HDMA presentations? 16 A. I did not review any HDMA 17 presentations. 18 Q. Did you talk to anybody to 19 familiarize yourself with 20 AmerisourceBergen's role in participating 21 in HDMA-related events? 22 MR. NICHOLAS: Hold on. 23 I'll object only to the extent 24 that this may invade the</p>	<p style="text-align: right;">Page 337</p> <p>1 Q. When do you believe you've 2 seen articles about that? 3 A. I can't cite specific ones. 4 Q. How about general ones? 5 A. I can't cite general ones. 6 Q. So you can't cite any is 7 what you're saying? 8 MR. NICHOLAS: You're asking 9 him to cite an article? 10 BY MR. PIFKO: 11 Q. You've referenced that 12 you've seen articles, but you can't 13 identify a specific article, correct? 14 A. Correct. 15 Q. When do you believe you 16 might have first heard of the idea of 17 migration? 18 MR. NICHOLAS: Objection. 19 Outside the scope. 20 Are you asking him in the 21 30(b)(6) context or otherwise? 22 MR. PIFKO: Individually. 23 MR. NICHOLAS: Individually. 24 Go ahead.</p>

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1 THE WITNESS: Was it ever
2 discussed, the term migration, as
3 you're stating it, of people that
4 were getting prescriptions filled
5 and then -- from out of state? I
6 mean, I had read articles on that
7 and I was aware of it.
8 BY MR. PIFKO:
9 Q. Okay. So migration is not a
10 term that you're familiar with, but you
11 are familiar with the idea of someone
12 traveling to a state and getting a
13 prescription and exporting it back to
14 somewhere else, correct?
15 MR. NICHOLAS: Object to the
16 form.
17 THE WITNESS: The specific
18 information that I had on that, on
19 the articles, was that -- whether
20 they were referring to some
21 arrests that were made by some
22 individuals who had gotten
23 prescriptions filled in another
24 state, and they arrested them in

Page 339

1 another state. If that makes
2 sense.
3 BY MR. PIFKO:
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
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[REDACTED]

20 BY MR. PIFKO:

21 Q. How would I find that

22 information out?

23 MR. NICHOLAS: Objection.

24 Object to the form of the

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1 question.

2 THE WITNESS: You have to

3 ask the person that's performing

4 that function.

5 BY MR. PIFKO:

6 Q. Who is responsible for

7 performing that function currently?

8 A. David May is the one who

9 oversees that department.

10 Q. So someone under him would

11 be responsible for doing that?

12 A. Yes.

13 Q. Okay. David May joined the

14 company in 2014.

15 Who served in his role prior

16 to him?

17 A. Ed Hazewski.

18 Q. If I wanted to know, for an

19 earlier time period, what the company's

20 practices were with respect to what they

21 look at, with respect to prescribing

22 physicians, would I ask him?

23 A. Yes.

24 Q. And how far back was his

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1 tenure in that position?

2 A. 2008, I believe. Somewhere

3 around there.

4 Q. Is he still with the

5 company?

6 A. Yes.

7 Q. What's his current role?

8 A. He's director diversion

9 control.

10 Q. In obtaining information

11 about a pharmacy, does AmerisourceBergen

12 investigate the type of doctor who is

13 writing prescriptions in comparison to

14 the type of pills he's prescribing, he or

15 she is prescribing?

16 MR. NICHOLAS: Hold on.

17 I'll object to the form. I also

18 would appreciate it if you would

19 put this into some time frame.

20 MR. PIFKO: For the time

21 period for which you're a

22 30(b)(6).

23 BY MR. PIFKO:

24 Q. Let me ask the question,

<p style="text-align: right;">Page 346</p> <p>1 just to get a cleaner record.</p> <p>2 During the time from prior</p> <p>3 to -- from -- prior to 2015, in obtaining</p> <p>4 information about a pharmacy's</p> <p>5 prescribing physicians, does</p> <p>6 AmerisourceBergen undertake any effort to</p> <p>7 evaluate the nature of the physician in</p> <p>8 comparison with the nature of the</p> <p>9 medicine that's being prescribed?</p> <p>10 MR. NICHOLAS: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: I don't know</p> <p>13 what medicine -- we get the top</p> <p>14 prescribers for the form, but it</p> <p>15 doesn't indicate what medicines</p> <p>16 they're prescribing.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. Do you ask, with respect to</p> <p>19 opioids or controlled substances -- let</p> <p>20 me just -- with respect to controlled</p> <p>21 substances, do you ask who the top</p> <p>22 prescribers are of controlled substances?</p> <p>23 MR. NICHOLAS: Objection.</p> <p>24 THE WITNESS: I don't know</p>	<p style="text-align: right;">Page 348</p> <p>1 Go ahead.</p> <p>2 THE WITNESS: I'm not</p> <p>3 understanding your question.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. I'm trying to assess</p> <p>6 whether, in evaluating activity at a</p> <p>7 pharmacy, AmerisourceBergen considers the</p> <p>8 fact that a large volume of prescriptions</p> <p>9 are being written by an out-of-area</p> <p>10 doctor for that pharmacy?</p> <p>11 MR. NICHOLAS: Objection.</p> <p>12 THE WITNESS: I would need</p> <p>13 to know the totality of the</p> <p>14 information. It goes back to a</p> <p>15 hypothetical of giving me a</p> <p>16 specific, if X then Y. I can't</p> <p>17 give you that. I don't know.</p> <p>18 I don't know if the pharmacy</p> <p>19 is on the border of -- he's in one</p> <p>20 state and the pharmacy is across</p> <p>21 the border. I don't know. I</p> <p>22 don't know.</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. I'm asking a more general</p>
<p style="text-align: right;">Page 347</p> <p>1 exact -- if that's the wording of</p> <p>2 the question. I don't know.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. So you don't know if the</p> <p>5 question just asks for the top</p> <p>6 prescribing physicians for all things</p> <p>7 that they sell, or if it's just for</p> <p>8 controlled substances?</p> <p>9 A. Correct.</p> <p>10 Q. Based on what you know,</p> <p>11 would it be a red flag if a pharmacy was</p> <p>12 writing -- filling a substantial number</p> <p>13 of prescriptions from an out-of-area</p> <p>14 doctor?</p> <p>15 MR. NICHOLAS: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: Again, I don't</p> <p>18 know the specific circumstances.</p> <p>19 I don't know.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. That's not something that</p> <p>22 you're familiar with?</p> <p>23 MR. NICHOLAS: That's not</p> <p>24 what he said. Objection.</p>	<p style="text-align: right;">Page 349</p> <p>1 question.</p> <p>2 Is that -- is that --</p> <p>3 generically, is that information that you</p> <p>4 would seek out, or is that something that</p> <p>5 you're not interested in?</p> <p>6 MR. NICHOLAS: I'll object</p> <p>7 to the form of the question.</p> <p>8 THE WITNESS: I would have</p> <p>9 to defer to the people that are</p> <p>10 doing the checks on the</p> <p>11 prescribers.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. Let's talk a little bit more</p> <p>14 about this document, Exhibit-12.</p> <p>15 It says, below the migration</p> <p>16 discussion, Identifying a rogue clinic.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Cash-only operation.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Does AmerisourceBergen</p> <p>23 evaluate the percentage of cash versus</p> <p>24 insurance payments that are made to a</p>

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1 pharmacy with respect to controlled
2 substances?
3 MR. NICHOLAS: Object to the
4 form.
5 THE WITNESS: We -- part of
6 the 590 form has that information.
7 BY MR. PIFKO:
8 Q. Do you do anything to verify
9 that information, like check accounting
10 records from a pharmacy?
11 MR. NICHOLAS: Object to the
12 form.
13 THE WITNESS: We do not have
14 any way to confirm whether people
15 are paying cash or not.
16 BY MR. PIFKO:
17 Q. It says down here, Drugs
18 prescribed are cocktail drugs.
19 Do you see that?
20 Oxy/hydro/Xanax. Do you see
21 that?
22 A. Yes.
23 Q. Do you know what
24 oxy/hydro/Xanax is referring to?

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1 A. I do not.
2 Q. Oxycodone, hydrocodone and
3 Xanax, does that sound right?
4 A. I mean, I see those -- that
5 on here. I'm not sure what they're
6 referring to as "cocktail."
7 Q. Does AmerisourceBergen
8 evaluate whether a pharmacy is filling
9 multiple prescriptions at one time for
10 certain combinations of controlled
11 substances?
12 A. We don't have that
13 information. We don't have patient -- or
14 prescriber dispensing information.
15 Q. It talks about site visits
16 in the next line.
17 Do you see that?
18 A. Yes.
19 Q. Do you train your sales
20 associates to observe signs of diversion
21 when they are at a customer site?
22 A. Yes.
23 Q. What do you train them to
24 look for?

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1 A. We have a presentation that
2 they go through of some of -- long lines,
3 a lot of cash transactions. There's a
4 whole host of things that we ask them to
5 take a look at.
6 Q. And then what do you do with
7 that information if they report it back
8 to you?
9 A. If they report it back to
10 us, we would investigate.
11 Q. What would an investigation
12 entail? Who would take that up?
13 MR. NICHOLAS: Let me just
14 interpose an objection to make
15 sure I understand the time frame
16 that we're talking about and
17 whether he's talking about as an
18 individual or in his 30(b)(6)
19 capacity.
20 BY MR. PIFKO:
21 Q. In his 30(b)(6) capacity is
22 what I'm asking.
23 MR. NICHOLAS: 2007 to 2014.
24 THE WITNESS: And what was

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1 your question? I'm sorry.
2 BY MR. PIFKO:
3 Q. So we talked about efforts
4 that the company may undertake to have
5 its sales associates observe signs of
6 diversion at a pharmacy, okay?
7 A. Yes.
8 Q. So I asked, if a sales
9 associate reports back to the company,
10 during the time period for which you're a
11 30(b)(6) representative, what does the
12 company do with that information?
13 A. We would investigate.
14 Q. And is there a specific
15 department who is responsible for
16 investigating it?
17 A. It could be the diversion
18 control department. It could be the
19 security group. It could be our
20 consultant that we utilize. It could be
21 any of those areas.
22 Q. Is there a set way that you
23 decide who is going to investigate it?
24 A. It depends on the

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1 circumstances, location, those type of
2 criteria.
3 Q. So you evaluate the
4 circumstances and location of the
5 incident, and that's how you decide who
6 is going to investigate it?
7 MR. NICHOLAS: Object to the
8 form.
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 BY MR. PIFKO:
16 Q. Can you identify any
17 occasions where a sales associate, during
18 the relevant time period for which you
19 are a 30(b)(6), has identified suspicious
20 conduct and the company conducted an
21 investigation?
22 A. I'd have to result back to
23 those records. I don't --
24 Q. What records would I look at

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1 to know that information?
2 MR. NICHOLAS: Let me make
3 sure I clarify that you're talking
4 about the Track 1 jurisdictions
5 now, right?
6 MR. PIFKO: Well, I'm
7 talking about their policies and
8 procedures in general.
9 MR. NICHOLAS: But you asked
10 him about identifying particular
11 instances. So I assume that we're
12 talking about Track 1
13 jurisdictions; is that correct?
14 MR. PIFKO: I was talking
15 about any jurisdiction.
16 MR. NICHOLAS: Well, then, I
17 object. It's overbroad and not
18 within the scope of the deposition
19 at all.
20 Go ahead.
21 BY MR. PIFKO:
22 Q. So my question was, what
23 records would I look at to know whether a
24 sales associate had reported suspicious

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1 activity?
2 MR. NICHOLAS: Same
3 objection. And objection to form.
4 THE WITNESS: It would --
5 the time frame you're talking
6 about, it would be in our
7 investigative -- investigation
8 records.
9 BY MR. PIFKO:
10 Q. Is there a specific name?
11 Just investigative records?
12 MR. NICHOLAS: Object to the
13 form.
14 Go ahead.
15 THE WITNESS: It's where we
16 maintain our investigations, yes.
17 BY MR. PIFKO:
18 Q. Have you ever heard the term
19 "due diligence files"?
20 A. Yes.
21 Q. Is that the same thing as
22 your investigation records, or is that
23 something different?
24 A. It could be. There could be

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1 a record of the investigations within the
2 due diligence file. But it also could be
3 in an investigation file, depending upon
4 the type and scope of the investigation.
5 Q. Who is responsible for
6 maintaining investigation files at the
7 company?
8 A. Bruce Gundy.
9 Q. How long has he had that
10 responsibility?
11 A. During the scope of 2007 to
12 2014.
13 Q. Okay. Do you know who has
14 that responsibility currently?
15 A. Bruce Gundy, same person.
16 Q. Does AmerisourceBergen
17 believe it's everybody in the company's
18 responsibility to prevent diversion?
19 MR. NICHOLAS: Object to the
20 form. It's an unfair question.
21 Go ahead.
22 THE WITNESS: We believe
23 that everyone has a responsibility
24 for compliance and need to conduct

<p style="text-align: right;">Page 358</p> <p>1 themselves such.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. Do you know if your sales</p> <p>4 associates receive bonuses from hitting</p> <p>5 sales targets?</p> <p>6 A. I don't know --</p> <p>7 MR. NICHOLAS: Hold on.</p> <p>8 This witness is not designated on</p> <p>9 the topic of compensation, as you</p> <p>10 know. So he's not in a position</p> <p>11 to answer that. There are other</p> <p>12 people who can answer that</p> <p>13 question, but not him.</p> <p>14 MR. PIFKO: It's a</p> <p>15 foundational question.</p> <p>16 MR. NICHOLAS: Well, I mean,</p> <p>17 this isn't his topic.</p> <p>18 MR. PIFKO: Okay. But he</p> <p>19 said he doesn't know, so we got</p> <p>20 the answer.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. Do you think there's a</p> <p>23 potential conflict in having someone who</p> <p>24 is bonus driven be responsible for</p>	<p style="text-align: right;">Page 360</p> <p>1 form.</p> <p>2 THE WITNESS: When the</p> <p>3 premise of your question is if</p> <p>4 they're bonus driven, I don't know</p> <p>5 that. And as you -- and as I</p> <p>6 indicated previously, all of our</p> <p>7 associates have a role in their</p> <p>8 responsibility to make sure that</p> <p>9 we operate in compliance,</p> <p>10 regardless of what their role is;</p> <p>11 whether they're an order filler,</p> <p>12 salesperson, record keeper.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Okay. But if someone has a</p> <p>15 compensation structure that's based on</p> <p>16 increasing sales, do you see that as at</p> <p>17 odds with identifying diversion?</p> <p>18 MR. NICHOLAS: Objection.</p> <p>19 Not within the scope of his areas.</p> <p>20 And I object to the form of the</p> <p>21 question. It's a hypothetical</p> <p>22 question as well.</p> <p>23 THE WITNESS: It's a</p> <p>24 hypothetical question.</p>
<p style="text-align: right;">Page 359</p> <p>1 identifying diversion?</p> <p>2 MR. NICHOLAS: Objection.</p> <p>3 Hold on. This isn't his area.</p> <p>4 It's not his area. You didn't</p> <p>5 designate him for this area. You</p> <p>6 have someone who you're going to</p> <p>7 depose on the issue of</p> <p>8 compensation.</p> <p>9 MR. PIFKO: It has to do</p> <p>10 with suspicious order monitoring</p> <p>11 processes and protocols.</p> <p>12 THE WITNESS: Can you</p> <p>13 restate the --</p> <p>14 MR. PIFKO: Yeah.</p> <p>15 In any event, you can object</p> <p>16 to scope, and we can fight about</p> <p>17 the impart of his testimony later.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. So the question is, do you</p> <p>20 think there is a potential conflict in</p> <p>21 having someone who is bonus driven be</p> <p>22 responsible for identifying diversion?</p> <p>23 MR. NICHOLAS: Same</p> <p>24 objection. Also, object to the</p>	<p style="text-align: right;">Page 361</p> <p>1 It goes back to the --</p> <p>2 you're giving me a set of</p> <p>3 potential facts and asking me to</p> <p>4 arrive at a conclusion. It would</p> <p>5 depend upon the situation.</p> <p>6 I don't think -- what you're</p> <p>7 inferring, I don't think, is</p> <p>8 correct.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. What am I inferring?</p> <p>11 MR. NICHOLAS: Hold it.</p> <p>12 Hold it. Object to the form of</p> <p>13 the question.</p> <p>14 The question is, what am I</p> <p>15 inferring? I object to the form</p> <p>16 of the question. I suggest we</p> <p>17 move on to some facts and not</p> <p>18 looking for sound bites.</p> <p>19 BY MR. PIFKO:</p> <p>20 Q. I asked you what you thought</p> <p>21 I was inferring.</p> <p>22 MR. NICHOLAS: Same</p> <p>23 objections.</p> <p>24 THE WITNESS: Can you repeat</p>

<p style="text-align: right;">Page 362</p> <p>1 the question?</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. I asked you, do you think</p> <p>4 there's a potential conflict in having</p> <p>5 someone who is bonus driven be</p> <p>6 responsible for identifying diversion?</p> <p>7 A. My answer is no.</p> <p>8 - - -</p> <p>9 (Whereupon, Amerisource</p> <p>10 Bergen-Zimmerman Exhibit-13,</p> <p>11 ABDCMDL 00278212, was marked for</p> <p>12 identification.)</p> <p>13 - - -</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. I'm handing you what is</p> <p>16 marked as Exhibit-13. For the record,</p> <p>17 it's a single-page document, Bates</p> <p>18 labeled ABDCMDL 00278212. And the</p> <p>19 metadata reflects that it's from your</p> <p>20 files, Mr. Zimmerman.</p> <p>21 Let me know when you're done</p> <p>22 reviewing it.</p> <p>23 A. Okay.</p> <p>24 Q. Do you recall this document?</p>	<p style="text-align: right;">Page 364</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. That's what the document</p> <p>3 says, okay?</p> <p>4 Do you dispute that it came</p> <p>5 from your computer?</p> <p>6 MR. NICHOLAS: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: I don't know</p> <p>9 if it came -- I mean, you're</p> <p>10 telling me it came from my</p> <p>11 computer. I don't recall ever</p> <p>12 seeing this document.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Do you know what this</p> <p>15 document is about?</p> <p>16 A. I've never seen this</p> <p>17 document.</p> <p>18 Q. Your testimony is you've</p> <p>19 never seen this document?</p> <p>20 A. I don't recall ever seeing</p> <p>21 this document.</p> <p>22 Q. Do you recall ever</p> <p>23 discussing this with anyone?</p> <p>24 MR. NICHOLAS: Object to the</p>
<p style="text-align: right;">Page 363</p> <p>1 A. I do not.</p> <p>2 Q. Do you recall writing this</p> <p>3 document?</p> <p>4 A. No.</p> <p>5 Q. Do you have any reason to</p> <p>6 dispute that this is a true and correct</p> <p>7 document that came from your files?</p> <p>8 MR. NICHOLAS: Object to the</p> <p>9 form.</p> <p>10 THE WITNESS: I don't know</p> <p>11 where it came from.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. Well, you understand that in</p> <p>14 litigation, documents come with</p> <p>15 information that tells you where they</p> <p>16 came from, as far as whose computer, et</p> <p>17 cetera? Do you understand that?</p> <p>18 A. Yes.</p> <p>19 Q. Well, this came from your</p> <p>20 computer.</p> <p>21 MR. NICHOLAS: I think the</p> <p>22 hang up here is you're just</p> <p>23 telling him stuff, and he has,</p> <p>24 really, no way of knowing.</p>	<p style="text-align: right;">Page 365</p> <p>1 form.</p> <p>2 THE WITNESS: This document?</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. The subject matter of this</p> <p>5 document.</p> <p>6 A. As we previously discussed,</p> <p>7 we talked about low-volume accounts, so</p> <p>8 I've had discussions regarding that.</p> <p>9 Q. Do you see here it says --</p> <p>10 it's talking about -- so it's talking</p> <p>11 about those types of customers,</p> <p>12 low-volume, high-controlled substances</p> <p>13 customers.</p> <p>14 It says, I'm rather</p> <p>15 concerned -- I'm in the middle of the</p> <p>16 document.</p> <p>17 I'm rather concerned about</p> <p>18 your pharmacy for a different reason.</p> <p>19 Based on your overall volume with us,</p> <p>20 your percentage of C-II orders is high</p> <p>21 and may be deemed suspicious by either</p> <p>22 our OMP system or regulatory authorities.</p> <p>23 This puts your account with</p> <p>24 AmerisourceBergen at significant risk of</p>

<p style="text-align: right;">Page 366</p> <p>1 closure or exposure to regulatory and 2 enforcement agencies. 3 Do you see that? 4 A. I do. 5 Q. Do you recall being 6 concerned about certain customers because 7 of their percentage of controlled 8 substances with respect to their overall 9 volume? 10 MR. NICHOLAS: Object to the 11 form. 12 THE WITNESS: As I 13 indicated, that was one of the 14 areas we were looking at, our 15 low-volume, higher-percentage 16 secondary accounts and whether 17 we -- you know, how we handled 18 those accounts. 19 BY MR. PIFKO: 20 Q. Did you ever undertake 21 efforts to report accounts for such 22 activity? 23 MR. NICHOLAS: Object to the 24 form.</p>	<p style="text-align: right;">Page 368</p> <p>1 A. Yes. 2 Q. -- is, you don't have a 3 position on whether it's appropriate to 4 give guidance to a customer on how to 5 escape your suspicious order monitoring 6 program? 7 MR. NICHOLAS: Well, that is 8 not what he said. I object to the 9 characterization of his testimony. 10 I object to the reference to the 11 jury, which is bullying and 12 harassing. 13 And why don't you just ask 14 him a factual question? 15 Go ahead. 16 THE WITNESS: We don't give 17 guidance to our customers on how 18 to circumvent our system. 19 BY MR. PIFKO: 20 Q. Do you believe that it's 21 inappropriate to do so? 22 MR. NICHOLAS: Object to the 23 form. 24 THE WITNESS: Again, to do</p>
<p style="text-align: right;">Page 367</p> <p>1 THE WITNESS: Report in what 2 way? 3 BY MR. PIFKO: 4 Q. As being suspicious. 5 A. If they placed an order that 6 met our suspicious order criteria, we 7 would have. 8 Q. Do you think it's 9 appropriate to provide guidance to a 10 customer on how to circumvent your 11 suspicious order monitoring program? 12 MR. NICHOLAS: Object to the 13 form. 14 THE WITNESS: I don't 15 think -- I'm not sure what your 16 question -- again, you're asking 17 me another hypothetical question 18 and asking me to give you a 19 response that -- again, I can't -- 20 I'm not going to answer a 21 hypothetical. 22 BY MR. PIFKO: 23 Q. So your position, the jury 24 is watching --</p>	<p style="text-align: right;">Page 369</p> <p>1 what? 2 BY MR. PIFKO: 3 Q. To tell a customer how not 4 to be caught by your system or the DEA's 5 system for engaging in suspicious 6 activity. 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: Again -- 10 MR. NICHOLAS: What DEA 11 system are you talking about? 12 THE WITNESS: Again, we have 13 a program that we implement and we 14 have our processes in place. And 15 we don't -- and part of that 16 process is not to tell customers 17 how to get around the system, or 18 however you worded it. 19 But that's not how our 20 program works. 21 BY MR. PIFKO: 22 Q. So here, after saying to 23 this category of customers, based on your 24 overall volume with us, your percentage</p>

<p style="text-align: right;">Page 370</p> <p>1 of C-II orders is high and may be deemed 2 suspicious by either our OMP system or 3 regulatory authorities, this document 4 then goes on to say, The way I see it is 5 that you have a couple of options. 6 First, you can make ABDC your primary 7 wholesaler and shift all purchases to us. 8 The second option is we arrange a 9 short-term transition process and you 10 stop buying controlled -- Schedule II 11 controlled substances from ABDC and shift 12 them to whomever you're buying other 13 products. The third option would be to 14 do nothing, but this is not a feasible 15 long-term decision. 16 Do you see that? 17 A. I see that. 18 Q. Do you think that's 19 appropriate guidance to give to a 20 customer? 21 MR. NICHOLAS: Hold on. 22 Objection. You are 23 mischaracterizing the witness's 24 testimony. The witness has said</p>	<p style="text-align: right;">Page 372</p> <p>1 throughout the day. 2 MR. NICHOLAS: I'm speaking 3 to you. And I'm speaking for the 4 record. 5 THE WITNESS: I don't know 6 who this document was -- 7 BY MR. PIFKO: 8 Q. That's not my question. I 9 didn't ask you who wrote the document, I 10 didn't ask you any of that. 11 I asked you if this kind of 12 language is an appropriate communication 13 to a customer? 14 MR. NICHOLAS: Objection to 15 the form of the question. 16 THE WITNESS: I don't know 17 if -- I don't know if it's a 18 communication to a customer. 19 You're asking me a question with a 20 conclusion that this is a 21 communication to a customer. And 22 you want me to answer the 23 question. I don't know it's a 24 communication.</p>
<p style="text-align: right;">Page 371</p> <p>1 he never -- he didn't write the 2 document. He's never seen the 3 document. 4 So I object to the line of 5 questions. This is not 30(b)(6) 6 material. I don't know why -- 7 it's not within -- 8 MR. PIFKO: You're over the 9 top with your objections. 10 MR. NICHOLAS: It's not 11 within -- 12 MR. PIFKO: Okay. Scope. 13 MR. NICHOLAS: -- his 14 personal knowledge. 15 MR. PIFKO: Scope. Scope, 16 and all the objections you want to 17 make. You need to stop speaking 18 to the witness, okay? 19 MR. NICHOLAS: I'm not 20 speaking to the witness. I'm 21 speaking to you. 22 MR. PIFKO: You are. He's a 23 smart guy. Obviously, he picks up 24 on this stuff. It has happened</p>	<p style="text-align: right;">Page 373</p> <p>1 BY MR. PIFKO: 2 Q. If this is communicated to a 3 customer, is this an appropriate message 4 to be communicated to a customer? It's a 5 simple question. 6 MR. NICHOLAS: Object to the 7 form of the question. Whether 8 it's a simple question or not, 9 it's not a fair question. 10 BY MR. PIFKO: 11 Q. AmerisourceBergen's position 12 is you don't know if this is an 13 appropriate type of conduct; is that what 14 I'm hearing from you? 15 MR. NICHOLAS: That's not 16 what he said. 17 THE WITNESS: I don't know 18 what -- who wrote it, who the 19 audience is, and what the 20 conversation is. It says, Talking 21 points. 22 Is it -- either you bring us 23 your full business or we can't 24 sell you controls, that's the --</p>

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1 that's the option. Is that an
2 appropriate discussion? I think
3 so.
4 BY MR. PIFKO:
5 Q. How about telling someone
6 that they can stop buying controlled
7 substances from you and shift them to
8 somebody else?
9 MR. NICHOLAS: Object to the
10 form of the question. You're just
11 arguing.
12 THE WITNESS: I think I
13 answered your question.
14 BY MR. PIFKO:
15 Q. You talked about the first
16 suggestion. I'm asking about the second
17 one.
18 MR. NICHOLAS: Object to the
19 form. Object to the debating.
20 THE WITNESS: I answered one
21 and two. One is bring us all your
22 business or, two, stop buying
23 C-IIs from us.
24 BY MR. PIFKO:

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1 Q. And buy them from someone
2 else? Do you think it's an
3 appropriate --
4 A. Buy it from their primary
5 vendor.
6 Q. So you think this is an
7 appropriate message to send to people?
8 MR. NICHOLAS: Object to the
9 form of the question. It's not
10 his message.
11 THE WITNESS: Is your
12 question is it appropriate for
13 customers to buy from a
14 wholesaler?
15 BY MR. PIFKO:
16 Q. My question is, is this an
17 appropriate message to communicate to
18 customers?
19 MR. NICHOLAS: Object to the
20 question. We're obviously
21 disagreeing as to what is the
22 "this." So it's an unfair
23 question.
24 But he's answered it anyway.

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1 It's asked and answered.
2 THE WITNESS: It's the same
3 answer.
4 BY MR. PIFKO:
5 Q. I don't believe I've gotten
6 an answer, so I'm going to ask you again.
7 A. Is it appropriate to tell a
8 secondary customer that either they bring
9 us their full book of business or we're
10 going to stop selling you controlled
11 substances? Is that your question?
12 Q. I'm asking this message in
13 here.
14 I'm asking if this message
15 is an appropriate message to communicate
16 to customers?
17 MR. NICHOLAS: Object to the
18 form. Because that's how he's
19 reading the message in here. So
20 he's answering --
21 MR. PIFKO: Again, you're
22 coaching him.
23 MR. NICHOLAS: No, I'm not.
24 You're not listening to his

Page 377

1 answers.
2 MR. PIFKO: You're coaching
3 him. And, honestly, if you keep
4 this up, I'm going to seek to have
5 you removed from defending any
6 depositions in this case, okay?
7 MR. NICHOLAS: That's fine.
8 MR. PIFKO: It's fine to
9 object vigorously and be
10 passionate about your position.
11 But you're going way above and
12 beyond, and you've been doing it
13 all day long.
14 And we are going to read the
15 transcript and it's going to show
16 all the discussion you're having,
17 asking facts, telling me what to
18 ask. That is not okay.
19 MR. NICHOLAS:
20 Unfortunately --
21 MR. PIFKO: You look like
22 you've been practicing long enough
23 to know that.
24 MR. NICHOLAS: If you're

<p style="text-align: right;">Page 378</p> <p>1 telling me -- if you're telling 2 me -- 3 MR. PIFKO: I understand 4 it's a big case and you're 5 stressed out. 6 MR. NICHOLAS: If you're 7 telling me I look old, I'm 8 insulted. 9 MR. PIFKO: But you have to 10 conduct yourself accordingly. 11 MR. NICHOLAS: I think 12 you're making a comment on my 13 personal look. You think I look 14 old? 15 MR. PIFKO: I don't think 16 you look old. I think you're an 17 established practitioner and I 18 think you know better and you know 19 that you know better. And you're 20 playing games here, and it needs 21 to stop. 22 MR. NICHOLAS: Are you going 23 to let me say something? 24 MR. PIFKO: No, I'm not here</p>	<p style="text-align: right;">Page 380</p> <p>1 don't know what their inference 2 was in writing this. 3 BY MR. PIFKO: 4 Q. So you can't provide an 5 opinion about whether this is an 6 appropriate message to send to somebody? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: And, again, 10 it's a talking point, and it's not 11 being sent to anyone. I don't 12 know -- you're asking me to give 13 you an answer to something I don't 14 know about. 15 BY MR. PIFKO: 16 Q. All right. That's your 17 position. That's fine. 18 - - - 19 (Whereupon, Amerisource 20 Bergen-Zimmerman Exhibit-14, 21 ABDCMDL 00000124-147, was marked 22 for identification.) 23 - - - 24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 379</p> <p>1 to ask you questions. 2 MR. NICHOLAS: Whether you 3 do or not, I'm -- 4 MR. PIFKO: No, you're not 5 entitled -- you're not the 6 witness. You're not entitled to 7 talk. You're just continuing the 8 problem right now. 9 BY MR. PIFKO: 10 Q. So I'm asking you, sir, you 11 read this document, you did, do you think 12 this is a message that is appropriate to 13 communicate to consumers -- customers? 14 MR. NICHOLAS: Object to the 15 form. 16 THE WITNESS: I don't know 17 what the message was. I don't 18 know who wrote the message. I 19 don't know who the audience of the 20 message was. I don't know. 21 You're asking me to commit 22 to something -- I don't know who 23 wrote this. I don't know the 24 talking points. I don't know -- I</p>	<p style="text-align: right;">Page 381</p> <p>1 Q. I'm handing you what is 2 marked as Exhibit-14. 3 A. Thank you. 4 Q. Bates labeled ABDCMDL 5 00000124 through 147. 6 According to the metadata on 7 this document, it has a doc date of 8 December 31st, 2007. 9 A. Okay. 10 Q. Have you seen this document 11 before? 12 A. It looks like a 13 presentation. 14 Q. Do you know what it's a 15 presentation for? 16 A. It says the sales associate 17 role. 18 Q. And the sales associate role 19 in what? 20 A. In diversion control. I 21 mean, that's the title of the 22 presentation. 23 Q. Is this something you 24 reviewed in preparing for your</p>

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1 deposition?

2 A. I believe I've seen a copy
3 of this, yes.

4 Q. In your undertaking to
5 familiarize yourself with the company's
6 diversion control practices and policies,
7 did you obtain an understanding of what
8 the purpose of this presentation was for?

9 A. It was for the sales -- I
10 believe it was for the sales group.

11 Q. Do you know when it was
12 given to them?

13 A. I don't.

14 Q. Do you know who would have
15 given this presentation to them?

16 A. I believe it was Ed
17 Hazewski.

18 Q. He was someone who was under
19 your chain of authority?

20 A. Yes.

21 Q. At that time, was he a
22 direct report to you?

23 A. I don't believe so.

24 Q. There was one person in

Page 384

1 A. That's correct. A lot of
2 the information is the same that we've
3 reviewed.

4 Q. Let's look at Page ABD CMDL
5 00000130.

6 Are you there?

7 A. Yes.

Page 383

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 385

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
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19 [REDACTED]
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21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

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[REDACTED]

Page 388

[REDACTED]

Page 387

[REDACTED]

Page 389

[REDACTED]

Page 390

[REDACTED]

Page 392

[REDACTED]

Page 391

[REDACTED]

Page 393

[REDACTED]

Page 394

[REDACTED]

Page 396

[REDACTED]

Page 395

[REDACTED]

Page 397

[REDACTED]

Page 398

[REDACTED]

Page 400

[REDACTED]

Page 399

[REDACTED]

Page 401

[REDACTED]

Page 402

[REDACTED]

Page 404

[REDACTED]

8 Q. Let's look at the next one.

9 Have you seen this before?

10 A. I don't recall seeing this

11 one before.

12 Q. Do you understand what it's

13 communicating here?

14 A. It's communicating that --

15 it's communicating that people are in

16 Florida getting their prescriptions

17 filled.

18 Q. And they're not from

19 Florida, right?

20 MR. NICHOLAS: Object to the

21 form. You're asking him now in

22 his individual capacity, right?

23 Because this is not part of a

24 30(b)(6).

Page 403

[REDACTED]

Page 405

1 MR. PIFKO: It's a training

2 document about the company's

3 diversion policies.

4 MR. NICHOLAS: Object to the

5 scope. Object to the form.

6 Go ahead.

7 THE WITNESS: That's what

8 the comic infers.

9 BY MR. PIFKO:

10 Q. That they're out-of-state

11 people coming to Florida to buy pills,

12 right?

13 A. It doesn't say out of state.

14 Q. It says, tourists.

15 Tourists, thank God. May I suggest

16 restaurants? Hotels? Destinations?

17 And the guy says back, We're

18 just here to buy some pills -- some pain

19 pills.

20 So it's suggesting that

21 they're from out of state.

22 A. Suggesting they're tourists.

23 Q. And they came from out of

24 state to Florida, he has a shirt that

Page 406

1 says Florida, to buy pills?
2 MR. NICHOLAS: Object to the
3 form.
4 BY MR. PIFKO:
5 Q. Is that what it's saying?
6 A. It's not saying they're from
7 out of state. But that's what it's
8 inferring, that tourists are buying pills
9 in Florida.
10 Q. That's consistent with the
11 issue that we talked about in Exhibit-12,
12 do you recall that? The HDMA meeting
13 with the DEA, people coming to Florida to
14 buy pills and take them to other states.
15 Do you recall that?
16 A. Yes.
17 Q. This is consistent with that
18 idea, right?
19 MR. NICHOLAS: Object to the
20 form.
21 THE WITNESS: That's --
22 that's what this is inferring,
23 yes, this comic strip.
24 BY MR. PIFKO:

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1 Q. So as of the date of this
2 document, the company knew that that was
3 a concern, agree?
4 A. It was another -- again, I
5 don't know who put this in here and what
6 the inference of the comic strip was.
7 It's not a picture of the red flags like
8 the previous ones are.
9 But that's the inference, is
10 that people were coming to Florida to get
11 their prescriptions filled.
12 Q. And then it says, Coming to
13 a state near you.
14 A. That's the title.
15 Q. What does that mean?
16 A. I don't know.
17 MR. NICHOLAS: Object to the
18 form.
19 BY MR. PIFKO:
20 Q. This is a company training
21 document about diversion control
22 practices, agree?
23 MR. NICHOLAS: Object to the
24 form.

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1 BY MR. PIFKO:
2 Q. It's what you said it was.
3 A. It's -- yes, a presentation
4 to the sales group. Yes.
5 Q. So the company is
6 acknowledging that there are -- there is
7 an issue with people from out of state
8 buying pills somewhere, agree?
9 MR. NICHOLAS: Object to the
10 form.
11 THE WITNESS: It indicates
12 that that is another flag that
13 should be considered, correct.
14 BY MR. PIFKO:
15 Q. This is a comic.
16 Does the company think that
17 diversion is a -- is funny?
18 MR. NICHOLAS: Object to the
19 form. That's a pretty obnoxious
20 question.
21 THE WITNESS: Absolutely
22 not.
23 BY MR. PIFKO:
24 Q. Does the company take its

Page 409

1 diversion control practices serious?
2 A. Yes.
3 Q. Do you know why they would
4 use a comic in a document like this to
5 communicate this message?
6 MR. NICHOLAS: I'll object
7 to the form.
8 THE WITNESS: It's the slide
9 that's -- that's the slide that --
10 I mean, I'm not sure what your
11 question is.
12 Why would they pick this
13 slide?
14 BY MR. PIFKO:
15 Q. And use humor to communicate
16 something serious like this.
17 MR. NICHOLAS: I'll object
18 to the form and to the
19 offensiveness of the question.
20 Go ahead.
21 THE WITNESS: I don't think
22 it's depicted in humor. I think
23 it's stating another red flag, if
24 you see people that are not from

Page 410

1 the area getting their
2 prescription filled.
3 BY MR. PIFKO:
4 Q. Did the company do anything
5 to address the potential for out-of-state
6 people potentially coming somewhere and
7 buying pills from a pharmacy?
8 A. We have no control over
9 where people go and get their
10 prescriptions filled. We don't know
11 where they come from.

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 412

1 about that?
2 A. No.
3 Q. The last page has some
4 individuals.
5 We talked about Ed?
6 A. Yes.
7 Q. Do you know who he is?
8 A. Ed Hazewski? Yes, director
9 of diversion control.
10 Q. How about the other people
11 in here?

12 A. Dave Breitmayer was in the
13 diversion control group, as well as Kevin
14 Kreutzer. And I'm not sure if their
15 title is investigator or specialist, but
16 they're in the diversion control group,
17 as well as Joe Tomkiewicz.

18 MR. PIFKO: Let's take a
19 break.
20 VIDEO TECHNICIAN: Going off
21 the record. The time is 4:40 p.m.

22 - - -
23 (Whereupon, a brief recess
24 was taken.)

Page 411

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Q. Have you heard the term
16 "blue highway" before?
17 A. No.
18 Q. You don't know what that is?
19 A. I have not heard that term.
20 Q. How about The Oxy Express,
21 have you heard of that before?
22 A. I'm not sure what it's in
23 reference to, but --
24 Q. You don't know anything

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1 - - -
2 VIDEO TECHNICIAN: We're
3 back on the record at 5:00 p.m.
4 BY MR. PIFKO:

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
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19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 414

[REDACTED]

Page 416

[REDACTED]

Page 415

[REDACTED]

Page 417

[REDACTED]

Page 418

[REDACTED]

24 would you tell pharmacies in the area

Page 420

[REDACTED]

Page 419

[REDACTED]

Page 421

[REDACTED]

Page 422

[REDACTED]

Page 424

[REDACTED]

Page 423

[REDACTED]

Page 425

[REDACTED]

Page 426

[REDACTED]

Page 428

[REDACTED]

Page 427

[REDACTED]

Page 429

[REDACTED]

Page 430

[REDACTED]

Page 432

[REDACTED]

22 MR. PIFKO: I'm going to
23 play a video.
24 (A video was shown.)

Page 431

[REDACTED]

Page 433

1 MR. NICHOLAS: Before you
2 ask --
3 BY MR. PIFKO:
4 Q. Did you think --
5 MR. NICHOLAS: -- a
6 question, I'm going to interpose
7 an objection to the playing of
8 this video in this context in this
9 deposition.
10 I think it's totally
11 inappropriate, and I object to it.
12 BY MR. PIFKO:
13 Q. Did you think that you
14 should be providing protection to anyone
15 else other than AmerisourceBergen when
16 implementing your diversion control
17 practices?
18 MR. NICHOLAS: I object to
19 the form of the question. It's
20 outside the scope. It's an
21 inappropriate question. It
22 doesn't seek any information
23 that's pertinent to any of the
24 topics on your list. I object to

Page 434	Page 436
<p>1 it.</p> <p>2 THE WITNESS: Your question?</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. Having seen the video, do</p> <p>5 you think that you should provide</p> <p>6 protection to anyone else besides</p> <p>7 yourself when you're implementing your</p> <p>8 diversion control practices?</p> <p>9 MR. NICHOLAS: I'll object</p> <p>10 to the form of the question. It</p> <p>11 mischaracterizes prior testimony.</p> <p>12 THE WITNESS: As I</p> <p>13 indicated, that we take our</p> <p>14 responsibility very seriously,</p> <p>15 regardless of the video.</p> <p>16 I understand about the</p> <p>17 opioid crisis, and it doesn't --</p> <p>18 it's impacted my family as well.</p> <p>19 It's impacted a lot of our</p> <p>20 employees as well. We understand</p> <p>21 what the circumstances are.</p> <p>22 And no, we aren't just about</p> <p>23 protecting AmerisourceBergen. We</p> <p>24 have a job to do. We have a job</p>	<p>1 And in order to do so, we</p> <p>2 need to continue to do our</p> <p>3 business diligently and in</p> <p>4 compliance and in a safe -- in a</p> <p>5 safe manner, to ensure that</p> <p>6 product supply to the hospitals</p> <p>7 and pharmacies and doctors is</p> <p>8 available. So it's not just about</p> <p>9 AmerisourceBergen.</p> <p>10 BY MR. PIFKO:</p> <p>11 Q. This is one of the biggest</p> <p>12 public health crises in America. And you</p> <p>13 guys are in the center of it.</p> <p>14 Do you think that you could</p> <p>15 have done more to protect the communities</p> <p>16 around you?</p> <p>17 MR. NICHOLAS: I'll object</p> <p>18 to the form of the question. It's</p> <p>19 argument. It's unfair.</p> <p>20 I'm going to let him answer.</p> <p>21 THE WITNESS: I've</p> <p>22 explained -- I've explained the</p> <p>23 process and the safeguards that we</p> <p>24 have in place and the things that</p>
Page 435	Page 437
<p>1 to make sure that the medications</p> <p>2 that we receive are properly</p> <p>3 stored and secure, in order to</p> <p>4 make them available for customers</p> <p>5 and patients that need them.</p> <p>6 These are -- these drugs are</p> <p>7 approved by the FDA. And we sell</p> <p>8 them to licensed pharmacists who</p> <p>9 fill prescriptions written by a</p> <p>10 licensed doctor.</p> <p>11 Again, I'm not -- what we do</p> <p>12 is to ensure that the integrity of</p> <p>13 the product makes it to a licensed</p> <p>14 pharmacy in order for the patient</p> <p>15 to have that product available.</p> <p>16 We implement our policy and</p> <p>17 procedures to ensure that we don't</p> <p>18 have diversion. And that is the</p> <p>19 responsibility we take, not just</p> <p>20 because -- just looking out for</p> <p>21 AmerisourceBergen, we supply 30</p> <p>22 percent of the -- 25 to 30 percent</p> <p>23 of the products within the United</p> <p>24 States.</p>	<p>1 we've done and the training that</p> <p>2 we've done in this area.</p> <p>3 It's a crisis. I don't know</p> <p>4 why, when we had a methamphetamine</p> <p>5 crisis, that there was call to</p> <p>6 action by legislature to include</p> <p>7 additional requirements. I'm not</p> <p>8 sure why they didn't do that in</p> <p>9 1990, '91, '92, all the way to</p> <p>10 today. They issue a guidance --</p> <p>11 they issue -- DEA has issued</p> <p>12 guidance letters.</p> <p>13 And if it's a crisis, I</p> <p>14 would expect them to have a</p> <p>15 call-to-arms and have everybody</p> <p>16 come to Washington, D.C. and --</p> <p>17 like we did with the chemicals,</p> <p>18 and create a solution, or at least</p> <p>19 work on a solution.</p> <p>20 We are -- as a private</p> <p>21 industry, we are trying to do --</p> <p>22 we are not trying to do, we are</p> <p>23 doing what we need to do to</p> <p>24 protect the supply channel with</p>

Page 438	Page 440
<p>1 the information that we have and 2 that's available to us. 3 And we take that very 4 seriously. I take that very 5 seriously. The company takes it 6 very seriously. 7 BY MR. PIFKO: 8 Q. Do you think that you have 9 any responsibility for the opioid crisis? 10 MR. NICHOLAS: Object to the 11 form of the question. It's 12 outside the scope. 13 Go ahead. 14 THE WITNESS: As I 15 indicated, that our responsibility 16 in the opioid crisis is to ensure 17 that those products that we buy 18 from the manufacturers that have 19 been -- that have been approved by 20 DEA, through quotas to manufacture 21 and distribute, and our job is to 22 make sure when those opioids are 23 within our control, that we 24 maintain adequate security for</p>	<p>1 for identification.) 2 - - - 3 BY MR. PIFKO: 4 Q. I'm handing you what has 5 been marked as Exhibit-15. 6 A. Thank you. 7 Q. For the record, this is a 8 March 2017 code of ethics and business 9 conduct of AmerisourceBergen, which was 10 obtained from the company's website. I 11 just want to ask you a quick couple of 12 questions about this. 13 You're the chief compliance 14 officer, right? 15 A. Correct. 16 Q. You have responsibility -- 17 MR. NICHOLAS: These are in 18 his individual capacity; is that 19 right? 20 MR. PIFKO: Yes. 21 BY MR. PIFKO: 22 Q. You have responsibility for 23 this document? 24 A. Yes.</p>
Page 439	Page 441
<p>1 those products, and recordkeeping. 2 We also make sure that we 3 vet our customers that we sell to, 4 which are licensed pharmacies by 5 the DEA and the Board of Pharmacy. 6 And we distribute those products 7 in a safe and secure manner. 8 BY MR. PIFKO: 9 Q. Do you think you've done 10 enough? 11 A. I think we are doing -- we 12 are always continuing to try to do more. 13 We're continually working with our 14 partners. We've been working with 15 legislation to try to create solutions 16 that would impact distribution that may 17 help in this situation. And we continue 18 to do that. 19 - - - 20 (Whereupon, Amerisource 21 Bergen-Zimmerman Exhibit-15, No 22 Bates, March 2017 23 AmerisourceBergen Code of Ethics 24 and Business Conduct, was marked</p>	<p>1 Q. This document doesn't 2 mention The Controlled Substances Act 3 once. 4 You can look through it, but 5 would you agree with me? 6 A. I don't know. I mean, I can 7 read it. 8 Q. I'll represent to you it 9 doesn't refer to The Controlled 10 Substances Act. You can look at the 11 table of contents here, compliance with 12 laws, Page I here. 13 Is The Controlled Substances 14 Act one of the laws that's mentioned 15 here? 16 MR. NICHOLAS: I'll object 17 to the form of the question. 18 You probably need to read 19 the entire document to really 20 answer a question like this. 21 But go ahead. 22 THE WITNESS: What was your 23 question? I'm sorry. 24 BY MR. PIFKO:</p>

<p style="text-align: right;">Page 442</p> <p>1 Q. It's got a discussion of 2 compliance with laws here in the table of 3 contents. 4 A. Okay. 5 Q. You agree that The 6 Controlled Substances Act is not one of 7 those laws that's listed here? 8 MR. NICHOLAS: Object to the 9 form. I'll object to the form. I 10 think the question is misleading. 11 THE WITNESS: In the section 12 that says, Associates must comply 13 with all applicable laws, 14 regulations and rules, including 15 but not limited to those described 16 below. 17 BY MR. PIFKO: 18 Q. Does it mention The 19 Controlled Substances Act? 20 MR. NICHOLAS: Object to the 21 form. 22 THE WITNESS: It doesn't 23 state that. 24 - - -</p>	<p style="text-align: right;">Page 444</p> <p>1 remembers or knows. 2 MR. PIFKO: You're coaching 3 him. 4 MR. NICHOLAS: Well, this is 5 just housekeeping. It's silly. 6 It's stupid. 7 THE WITNESS: Your question 8 was? 9 BY MR. PIFKO: 10 Q. Is this a true and correct 11 copy of the document that was -- 12 A. It appears to be. It 13 appears to be. 14 Q. Okay. Is this from your 15 files? 16 MR. NICHOLAS: Objection to 17 the form. 18 THE WITNESS: I don't know 19 where it came from. 20 BY MR. PIFKO: 21 Q. What is this document? Can 22 you tell me what it is? 23 A. It looks like -- it looks 24 like a series of org charts.</p>
<p style="text-align: right;">Page 443</p> <p>1 (Whereupon, Amerisource 2 Bergen-Zimmerman Exhibit-16, No 3 Bates, West Virginia Case 4 Document, Organization Charts, was 5 marked for identification.) 6 - - - 7 BY MR. PIFKO: 8 Q. I'm handing you what is 9 marked as Exhibit-16. It's a document 10 that was used in your deposition in the 11 West Virginia litigation. 12 Do you recall this document? 13 A. Yes. I believe from the 14 West Virginia case. 15 Q. Do you agree this is a true 16 and correct copy of the exhibit that 17 was -- 1 was attached to your West 18 Virginia litigation as referenced here on 19 the first page of the document? 20 MR. NICHOLAS: Object to the 21 form -- 22 THE WITNESS: Do I -- 23 MR. NICHOLAS: -- in the 24 sense that I don't know if he</p>	<p style="text-align: right;">Page 445</p> <p>1 Q. Is this an accurate 2 depiction of the -- your department, the 3 CSRA? 4 MR. NICHOLAS: When? 5 THE WITNESS: Yeah, which -- 6 BY MR. PIFKO: 7 Q. Well, it's got various 8 periods on it. The whole document. 9 MR. NICHOLAS: I think you 10 have to focus the question for 11 him. 12 THE WITNESS: Which one? 13 BY MR. PIFKO: 14 Q. Every single page, you're at 15 the top. 16 MR. NICHOLAS: I'll object 17 to the form. I'm not seeing any 18 dates on the document at all. 19 THE WITNESS: I don't see 20 any dates either. 21 BY MR. PIFKO: 22 Q. Your name is at the top of 23 each one of these pages, correct? 24 A. But what year?</p>

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1 Q. You're going to tell me.
2 You're the expert here. It's your
3 department. This is your document, not
4 mine.
5 Let's look at the first
6 page.
7 A. Okay.
8 Q. That's your name at the top
9 of this, right?
10 A. Yes.
11 Q. When you look at this and
12 see the people here and the positions
13 here, can you tell me when this was?
14 MR. NICHOLAS: Objection.
15 Outside the scope. Object to the
16 form.
17 THE WITNESS: Possibly 2007.
18 I'm not sure exactly.
19 BY MR. PIFKO:
20 Q. It says, Associates assigned
21 to provide resources for the diversion
22 control program.
23 Do you see that? On the
24 left at the top, under the word, Current.

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1 A. Yes.
2 Q. And then underneath there,
3 it says, Everyone already has a full-time
4 job.
5 Do you see that?
6 A. Yes.
7 Q. That's because the people
8 responsible to provide resources for the
9 diversion control program had other
10 responsibilities, right?
11 MR. NICHOLAS: Object to the
12 form.
13 THE WITNESS: We already had
14 diversion control. We just --
15 this is in 2007. So part of their
16 jobs was already in diversion
17 control.
18 BY MR. PIFKO:
19 Q. Part of their job what?
20 A. Was part -- was for
21 diversion control.
22 Q. Right. So all of these
23 people had other jobs as well, correct?
24 MR. NICHOLAS: Object to the

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1 form.
2 THE WITNESS: In a sense
3 they had other duties in addition
4 to diversion control. As we
5 indicated with investigations,
6 they also investigated theft. You
7 had -- you have regional directors
8 that also ensure compliance with
9 other -- not just the controlled
10 substance requirements but also
11 security and prescription drug
12 requirements that always had
13 controlled substances and
14 diversion as well.
15 BY MR. PIFKO:
16 Q. Let's look -- can you point
17 me to where the investigations department
18 is? Who it that -- who is on this first
19 page?
20 A. Bruce Gundy.
21 Q. So there's four
22 investigators underneath him?
23 A. Correct.
24 Q. Does he perform

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1 investigations himself?
2 A. Yes.
3 Q. If we look at the next page,
4 there's Bruce Gundy.
5 And how many people are
6 under him?
7 A. Three.
8 Q. The next page?
9 A. I can't really read it.
10 Q. It's next to Mr. Hazewski.
11 MR. NICHOLAS: Hazewski.
12 MR. PIFKO: Sorry.
13 THE WITNESS: Are you
14 referring to Bruce or Ed?
15 BY MR. PIFKO:
16 Q. Bruce.
17 You were trying to look for
18 his department. How many people were
19 in --
20 A. Yes.
21 Q. -- his department on the
22 third page?
23 A. He has two.
24 Q. Two.

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1 And then let's look at the
2 next page, how many?
3 A. Two.
4 Q. And the last page?
5 A. Two.
6 Q. And all those investigators
7 have duties other than diversion control,
8 correct?
9 MR. NICHOLAS: Object to the
10 form.
11 THE WITNESS: Yes. But
12 as -- so after the first one,
13 there's a diversion control
14 department, which had
15 investigators contained within
16 there that moved from Bruce to
17 diversion control.
18 So now you had diversion
19 control doing investigations, as
20 well as Bruce's people doing
21 investigations.
22 The regional directors also
23 performed investigations, and same
24 with the senior directors as well.

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1 And then you had a
2 compliance staff at each of the
3 distribution centers. We have 26
4 distribution centers, all with a
5 compliance staff of either two to
6 six individuals. So -- also with
7 a role within -- looking into
8 these issues.
9 BY MR. PIFKO:
10 Q. Let's look at the last page
11 for completeness here.
12 Four people as investigators
13 there?
14 A. Yes. Four investigators
15 under Bruce. And then you see
16 investigators under diversion control.
17 - - -
18 (Whereupon, Amerisource
19 Bergen-Zimmerman Exhibit-17,
20 ABDCMDL 00251392-94, was marked
21 for identification.)
22 - - -
23 BY MR. PIFKO:
24 Q. I'm handing you what is

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1 marked as Exhibit-17.
2 Have you seen this before?
3 It's ABDCMDL 00251392 through 94. I just
4 have some quick questions about this.
5 Are you familiar with this
6 policy and procedure?
7 A. I've seen it, yes.
8 Q. It says that this is retail
9 pharmacy targeted visits.
10 What is that?
11 A. Retail targeted visit; that
12 we've identified a pharmacy that they
13 want to do additional investigation --
14 Q. Okay.
15 A. -- which consisted of a
16 targeted visit.
17 Q. I want to direct your
18 attention to the bottom where it says, 2,
19 pre-visit preparation.
20 Are you there?
21 A. Yes, I am.
22 Q. It says, The CSRA
23 representative conducting the visit will
24 request, in writing, that the account

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1 manager contact the owner/pharmacist in
2 charge, inform him/her of the visit and
3 ensure that the owner, person in charge,
4 or their designee, will be present on the
5 arranged date in order to give their
6 undivided attention to the CSRA
7 representative for a minimum of one hour.
8 The account manager is responsible for
9 coordinating the visit date and time with
10 the owner and/or person in charge or
11 their designee.
12 Do you see that?
13 A. Yes.
14 Q. So I just want to confirm,
15 under AmerisourceBergen's policy for
16 investigating and visiting pharmacies,
17 the owner or person in charge or designee
18 is provided advanced notice of those
19 visits, correct?
20 A. Yes. We need them there in
21 order to conduct our site visit.
22 - - -
23 [REDACTED]
24 [REDACTED]

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[REDACTED]

Page 456

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<p style="text-align: right;">Page 482</p> <p>1 BY MR. PIFKO: 2 Q. What about for your 3 investigations and due diligence files, 4 who would be familiar with those? 5 A. That would be, if they are 6 CSRA files, that would be my department, 7 or our department. 8 Q. Who within your department 9 would have the most expertise about that? 10 MR. NICHOLAS: Object to the 11 form. 12 THE WITNESS: What time 13 frame? 14 BY MR. PIFKO: 15 Q. Well, let's -- any time 16 frame. Tell me. 17 A. We've changed systems 18 through the course. In addition to the 19 SAP, we have also changed internal 20 systems within CSRA. 21 Q. Okay. How about for the -- 22 2007 to 2012? 23 A. The investigation, 24 investigations would probably be, you</p>	<p style="text-align: right;">Page 484</p> <p>1 deposition, did you understand yourself 2 to be designated to testify about topics 3 concerning the company's involvement with 4 the had? 5 A. Yes. 6 Q. What steps did you take to 7 become familiar with the company's 8 involvement with the had? 9 A. I had my personal 10 involvement with the -- we talked about 11 the committees I participated on. I 12 reviewed the had document, I can't 13 remember the title of it, the guidelines. 14 And that's pretty much it. 15 Q. Did you talk to anyone 16 besides reviewing your own documents? 17 A. Outside -- no. Outside of 18 counsel, no. 19 Q. Did you review any documents 20 that weren't your own documents? 21 A. I indicated the document of 22 the had guidelines. That's not my 23 document, but I reviewed that document. 24 Q. There's many people at the</p>
<p style="text-align: right;">Page 483</p> <p>1 want a name? 2 It would probably be Bruce 3 Gundy. And Steve Mays, who you've 4 mentioned. He has some system 5 responsibilities -- not responsibilities, 6 but knowledge within CSRA as well. 7 Q. And then how about for the 8 more recent period, 2012 to present, do 9 you know? 10 MR. NICHOLAS: Object to the 11 form and to the scope, to some 12 extent. 13 THE WITNESS: If your 14 question is who in CSRA would have 15 that information up to the 16 present, I assume, would be -- 17 David May would have information 18 regarding that process. 19 And then Bruce Gundy is also 20 still in investigations. He would 21 be that person for investigations. 22 BY MR. PIFKO: 23 Q. Okay. Thanks. 24 In preparing for this</p>	<p style="text-align: right;">Page 485</p> <p>1 company who have participated with the 2 had, correct? 3 A. Yes. 4 Q. Who all, to your knowledge, 5 has participated in the had? 6 A. It's a lot. 7 Q. Okay. 8 A. It could be 50. Because 9 they have different segments, whether 10 it's tax, whether it's procurement, 11 whether it's government affairs. 12 Q. How about with respect to 13 diversion issues? 14 A. It would be Steve Mays, 15 David May. 16 Q. Steve Mays, has he been 17 involved in the had? What is the time 18 period? 19 A. He's been involved with the 20 regulatory affairs committee for years 21 prior to 2007. 22 Q. Prior to 2007? 23 A. Yes. I believe so. 24 Q. Does he still have</p>

<p>Page 486</p> <p>1 involvement with the had?</p> <p>2 A. Yes.</p> <p>3 Q. I understand that there's a</p> <p>4 gap in your document production from</p> <p>5 August 24th, 2007 to July 15th, 2010.</p> <p>6 Do you have any reason to</p> <p>7 believe that there would be documents not</p> <p>8 in your system from then from you?</p> <p>9 A. No.</p> <p>10 Q. Were you still working for</p> <p>11 the company during that time period?</p> <p>12 A. Yes.</p> <p>13 Q. Did you have a computer and</p> <p>14 e-mail during that time period?</p> <p>15 A. I did.</p> <p>16 Q. Are you aware of any system</p> <p>17 crashes during that time period?</p> <p>18 MR. NICHOLAS: Let me</p> <p>19 interpose an objection to the</p> <p>20 extent that I personally don't</p> <p>21 know if the representation you're</p> <p>22 making is right about the</p> <p>23 documents.</p> <p>24 But go ahead and ask your</p>	<p>Page 488</p> <p>1 like, ten seconds to decide</p> <p>2 whether to ask him any questions.</p> <p>3 MR. PIFKO: Sure.</p> <p>4 VIDEO TECHNICIAN: Going off</p> <p>5 the record. 6:19 p.m.</p> <p>6 - - -</p> <p>7 (Whereupon, a brief recess</p> <p>8 was taken.)</p> <p>9 - - -</p> <p>10 VIDEO TECHNICIAN: Back on</p> <p>11 record at 6:22 p.m.</p> <p>12 MR. NICHOLAS: I have no</p> <p>13 questions for the witness. So,</p> <p>14 Mr. Zimmerman, thank you very much</p> <p>15 and you're excused. Although you</p> <p>16 can sit here to listen to us argue</p> <p>17 about one last thing.</p> <p>18 Just you said -- you said,</p> <p>19 you know, five minutes ago that</p> <p>20 there was a gap in the documents.</p> <p>21 It's the first I've heard of that.</p> <p>22 You haven't raised that with us up</p> <p>23 until now.</p> <p>24 I suspect there's not a gap</p>
<p>Page 487</p> <p>1 questions.</p> <p>2 THE WITNESS: What was the</p> <p>3 last question? Sorry.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. I was just asking if you</p> <p>6 were aware of any system failures or</p> <p>7 crashes of servers during that time</p> <p>8 period at the company?</p> <p>9 A. Not that I know of.</p> <p>10 MR. PIFKO: Okay. Well,</p> <p>11 it's my understanding that there's</p> <p>12 that gap in those documents and</p> <p>13 there may be other documents that</p> <p>14 might come into the production.</p> <p>15 So subject to additional</p> <p>16 documents that might be produced,</p> <p>17 we will reserve our right to</p> <p>18 recall. And I'm sure we can meet</p> <p>19 and confer about it if we have a</p> <p>20 dispute.</p> <p>21 And other than that, I don't</p> <p>22 have any questions for you at the</p> <p>23 moment.</p> <p>24 MR. NICHOLAS: Give me,</p>	<p>Page 489</p> <p>1 in the documents. But in any</p> <p>2 event, this is all my way of</p> <p>3 saying we don't necessarily agree</p> <p>4 that you're going to be able to</p> <p>5 come back, you know, for another</p> <p>6 deposition. That's something</p> <p>7 we'll have to fight about.</p> <p>8 MR. PIFKO: I agree. That</p> <p>9 was my statement, that we can meet</p> <p>10 and confer about it.</p> <p>11 So we can dispute about</p> <p>12 whether that happens or not.</p> <p>13 MR. NICHOLAS: Okay. I've</p> <p>14 got nothing else.</p> <p>15 VIDEO TECHNICIAN: This ends</p> <p>16 today's deposition. We're going</p> <p>17 off the record at 6:23 p.m.</p> <p>18 - - -</p> <p>19 (Whereupon, the deposition</p> <p>20 was concluded at 6:23 p.m.)</p> <p>21 - - -</p> <p>22</p> <p>23</p> <p>24</p>

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<p>1 CERTIFICATE</p> <p>2</p> <p>3</p> <p>4 I HEREBY CERTIFY that the</p> <p>5 witness was duly sworn by me and that the</p> <p>6 deposition is a true record of the</p> <p>7 testimony given by the witness.</p> <p>8</p> <p>9</p> <p>10</p> <p>11 Amanda Maslynsky-Miller</p> <p>12 Certified Realtime Reporter</p> <p>13 Dated: August 6, 2018</p> <p>14</p> <p>15</p> <p>16</p> <p>17 (The foregoing certification</p> <p>18 of this transcript does not apply to any</p> <p>19 reproduction of the same by any means,</p> <p>20 unless under the direct control and/or</p> <p>21 supervision of the certifying reporter.)</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 - - - - -</p> <p>2 E R R A T A</p> <p>3 - - - - -</p> <p>4 PAGE LINE CHANGE</p> <p>5</p> <p>6 REASON: _____</p> <p>7</p> <p>8 REASON: _____</p> <p>9</p> <p>10 REASON: _____</p> <p>11</p> <p>12 REASON: _____</p> <p>13</p> <p>14 REASON: _____</p> <p>15</p> <p>16 REASON: _____</p> <p>17</p> <p>18 REASON: _____</p> <p>19</p> <p>20 REASON: _____</p> <p>21</p> <p>22 REASON: _____</p> <p>23</p> <p>24 REASON: _____</p>
<p>Page 491</p> <p>1 INSTRUCTIONS TO WITNESS</p> <p>2</p> <p>3 Please read your deposition</p> <p>4 over carefully and make any necessary</p> <p>5 corrections. You should state the reason</p> <p>6 in the appropriate space on the errata</p> <p>7 sheet for any corrections that are made.</p> <p>8 After doing so, please sign</p> <p>9 the errata sheet and date it.</p> <p>10 You are signing same subject</p> <p>11 to the changes you have noted on the</p> <p>12 errata sheet, which will be attached to</p> <p>13 your deposition.</p> <p>14 It is imperative that you</p> <p>15 return the original errata sheet to the</p> <p>16 deposing attorney within thirty (30) days</p> <p>17 of receipt of the deposition transcript</p> <p>18 by you. If you fail to do so, the</p> <p>19 deposition transcript may be deemed to be</p> <p>20 accurate and may be used in court.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 493</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3 I, _____, do</p> <p>4 hereby certify that I have read the</p> <p>5 foregoing pages, 1 - 489, and that the</p> <p>6 same is a correct transcription of the</p> <p>7 answers given by me to the questions</p> <p>8 therein propounded, except for the</p> <p>9 corrections or changes in form or</p> <p>10 substance, if any, noted in the attached</p> <p>11 Errata Sheet.</p> <p>12</p> <p>13 CHRISTOPHER ZIMMERMAN _____ DATE _____</p> <p>14</p> <p>15 Subscribed and sworn</p> <p>16 to before me this</p> <p>17 _____ day of _____, 20 ____.</p> <p>18 My commission expires: _____</p> <p>19</p> <p>20 Notary Public _____</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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